

FEDERAL REGISTER



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Presidential Documents

Title 3—THE PRESIDENT

Executive Order 11102

INSPECTION OF RETURNS BY POSSESSIONS OF THE UNITED STATES

By virtue of the authority vested in me by sections 6103(a) and 6106 of the Internal Revenue Code of 1954 (68A Stat. 753, 756; 26 U.S.C. 6103(a), 6106) it is hereby ordered that returns made in respect of the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, 23, and 32, subchapters B, C, and D of chapter 33, and subchapter B of chapter 37 of such Code shall be open to inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of any possession of the United States. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed for such inspection by the Secretary of the Treasury in the Treasury decision approved by me this date.

This Executive order shall be effective upon its filing for publication in the FEDERAL REGISTER.

JOHN F. KENNEDY

THE WHITE HOUSE,
April 4, 1963.

[F.R. Doc. 63-3703; Filed, Apr. 5, 1963; 10:50 a.m.]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Post Office Department

Effective upon publication in the FEDERAL REGISTER, subparagraphs (6), (7), (8), and (10) of paragraph (b) of § 6309 are amended as set out below.

§ 6309 Post Office Department.

* * * * *

(b) *Bureau of Facilities.* * * *

(6) One Executive Assistant to the Assistant Postmaster General.

(7) One Director of Community Programs.

(8) One Private Secretary to the Executive Assistant to the Assistant Postmaster General.

* * * * *

(10) One Assistant for Congressional Relations to the Executive Assistant to the Assistant Postmaster General.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
MARY V. WENZEL,
*Executive Assistant to
the Commissioner.*

[F.R. Doc. 63-3622; Filed, Apr. 5, 1963; 8:50 a.m.]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER D—SPECIAL PROGRAMS

[1962 Feed Grain Program, Supp. 2, Amdt. 2]

PART 775—FEED GRAINS

Subpart—1962 Feed Grain Program Regulations

MARKETING OF CERTIFICATES

The regulations governing the 1962 Feed Grain Program, 26 F.R. 10787, are amended to provide in § 775.166 for limited redemptions of pooled certificate rights in certain grain which is delivered by the producer to CCC, in settlement of price support loans.

Section 775.166 as amended will read as follows:

§ 775.166 Marketing of certificates.

All certificates for which payees have requested CCC's assistance in marketing

shall be pooled by CCC and shall lose their identity as individual certificates. The amount of the certificate pool shall be the total of the value of certificates of which CCC has made constructive delivery to the payees and the value of the certificates presented to the county office by the payees for marketing by CCC. Such amount shall be equal to the amount of cash advances to the payees. CCC shall market the rights represented by pooled certificates at such times and in such manner as it determines will best effectuate the purposes of the program. Such rights shall be marketed for immediate use by the purchaser to obtain delivery of grain from CCC. CCC reserves the right to determine the time and place of delivery and the kind, class, grade, quality, and quantity of grain delivered in redemption of such rights. Certificate rights may also be used by a participant in the 1963 Feed Grain Program to acquire grain delivered by him to CCC in settlement for such price support loans as may be designated by CCC. The provisions of §§ 775.169 and 775.170 shall apply to such redemptions, except that the quantity of grain that may be so acquired may be limited by CCC. Grain delivered by CCC under this section in redemption of certificate rights shall be valued at the market price at point of delivery as determined by CCC. The term "Certificate Pool Sale—Feed Grain Program" used in contracts of CCC shall be deemed to refer to a transaction involving the sale of rights represented by pooled certificates and the immediate use of such rights to acquire grain from CCC.

(Sec. 133, 75 Stat. 303, sec. 16(d), 49 Stat. 1151, as amended; secs. 4 and 5, 62 Stat. 1070-1072, as amended; 16 U.S.C. 590 p; 15 U.S.C. 714 b and c)

Signed at Washington, D.C., on April 3, 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-3633; Filed, Apr. 5, 1963; 8:52 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Tree Nuts), Department of Agriculture

[Navel Orange Reg. 34]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.334 Naval-Orange Regulation 34.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907; 27 F.R. 10087), regulating the handling of navel oranges grown in Arizona and designated part of California, ef-

fective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 4, 1963.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., April 7, 1963, and ending at 12:01 a.m., P.s.t., April 14, 1963, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
 - (ii) District 2: 550,000 cartons;
 - (iii) District 3: Unlimited movement;
 - (iv) District 4: Unlimited movement.
- (2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same

meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 5, 1963.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 63-3719; Filed, Apr. 5, 1963; 11:26 a.m.]

[Valencia Orange Reg. 41]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 908.341 Valencia Orange Regulation 41.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908; 27 F.R. 10089), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such

provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 4, 1963.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., April 7, 1963, and ending at 12:01 a.m., P.s.t., April 14, 1963, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: Unlimited movement;
- (iii) District 3: 100,000 cartons.

(2) As used in this section, "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said marketing agreement and order, as amended.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 5, 1963.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 63-3720; Filed, Apr. 5, 1963; 11:27 a.m.]

[Lemon Reg. 57]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.357 Lemon Regulation 57.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insuffi-

cient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 2, 1963.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., April 7, 1963, and ending at 12:01 a.m., P.s.t., April 14, 1963, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 232,500 cartons;
- (iii) District 3: Unlimited movement.

(2) As used in this section, "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 4, 1963.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 63-3664; Filed, Apr. 5, 1963; 8:52 a.m.]

[Grapefruit Reg. 22]

PART 912—GRAPEFRUIT GROWN IN INDIAN RIVER DISTRICT IN FLORIDA

Limitation of Handling

§ 912.322 Grapefruit Regulation 22.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912; 27 F.R. 87; 28 F.R. 23), regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the

Indian River Grapefruit Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Indian River grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Indian River grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 4, 1963.

(b) Order. (1) The quantity of grapefruit grown in the Indian River District which may be handled during the period beginning at 12:01 a.m., e.s.t., April 8, 1963, and ending at 12:01 a.m., e.s.t., April 15, 1963, is hereby fixed at 250,000 standard packed boxes.

(2) As used in this section, "handled," "Indian River District," "grapefruit," and "standard packed box" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 5, 1963.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 63-3718; Filed, Apr. 5, 1963; 11:26 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 8280 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Martin-Marietta Corp.

Subpart—Acquiring stock or assets of competitor: § 13.5 *Acquiring stock or assets of competitor.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18) [Order of divestiture, Martin-Marietta Corporation, New York, N.Y., Docket 8280, Mar. 12, 1963]

Consent order requiring one of the largest domestic producers of concrete pipe, cement, lime, construction aggregates, and a variety of other products, which had in the 20 years since its organization in 1930 already acquired 20 concerns, to divest itself absolutely within two years of properties acquired in or since 1953 including 60 concrete pipe plants and businesses, two lime plants, and 13 crushed stone, sand and gravel quarries, plants or quarry sites, and in such manner as to establish the properties as going concerns and effective competitors; and to desist for 10 years from acquiring any concrete, lime or construction aggregates corporation and for seven years any cement producer, both within specified territories.

The divestiture order and order to cease and desist, including further order requiring report of compliance therewith, are as follows:

It is ordered, That Martin-Marietta Corporation within a period not exceeding twenty-four (24) months after the service upon it of this order, unless extended, shall divest itself absolutely, in good faith, and to purchasers approved by the Federal Trade Commission, of the following listed plants, properties and assets, including, but not limited to, all machinery, equipment, raw material reserves, trade names, contract rights, trademarks and good will, connected therewith or a part thereof:

I. Concrete pipe plants and businesses at the following locations:

Grand Rapids, Mich.	Riverside, Mo.
Jackson, Mich.	Sibley, Iowa
Saginaw, Mich.	Denver, Colo.
Pottstown, Pa.	Jacksonville, Fla.
Parkersburg, W. Va.	Birmingham, Ala.
Azusa (Irwindale), Calif.	Melbourne, Ky.
Binghamton, N.Y.	Littlefield, Tex.
Bridgeville, Pa.	Chelsea (Memphis), Tenn.
Clarksburg, W. Va.	President Island, Tenn.
Columbus, Ohio	Lafayette, Ind.
Dania, Fla.	Lake View, Iowa
Decatur, Ala.	Chico, Calif.
Dothan, Ala.	Yuba City, Calif.
Kenvil, N.J.	Charlotte, N.C.
Louisville, Ky.	Columbia, S.C.
New Martinsville, W. Va.	Ocala, Fla.
Norristown, Pa.	Rochester, N.Y.
Fremont, Nebr.	St. Petersburg, Fla.
Scottsbluff, Nebr.	Syracuse, N.Y.

Tampa, Fla.
Calipatria, Calif.
Colton, Calif.
Dover, Del.
Phoenix, Ariz.
Albuquerque, N. Mex.
Farmington, N. Mex.
El Paso, Tex.
Healdsburg, Calif.
Hicksville, N.Y.
Lilesville, N.C.
Sparks, Nev.

Portland, Oreg.
Windsor, Vt.
Lawton, Okla.
Ada, Okla.
Oklahoma City, Okla.
(11th Street and Lillard Park)
Spokane, Wash.
Seattle, Wash.
Fairbanks, Alaska
Anchorage, Alaska
Pampa, Tex.

The above listed plants were acquired, or were replacements for plants acquired, as a result of the acquisition of the following corporations and businesses, and constituted their principal assets:

- (1) Lamar Pipe and Tile Company, a Michigan corporation;
- (2) Concrete Products Co. of America, a Pennsylvania corporation;
- (3) Universal Concrete Pipe Company, an Ohio corporation;
- (4) Concrete Conduit Company, a California corporation;
- (5) Tellyer Concrete Pipe Company, a California corporation;
- (6) Mid-West Concrete Pipe Co., an Illinois corporation;
- (7) Atlantic Concrete Pipe Company, a New York corporation;
- (8) Parkersburg Concrete Products Co., a West Virginia corporation;
- (9) Hayman Concrete Pipe Company, a Delaware corporation;
- (10) Platte Valley Cement Tile Manufacturing Company, a Nebraska corporation;
- (11) Kansas City Concrete Pipe Company, a Missouri corporation;
- (12) Sibley Cement Company, an Iowa corporation;
- (13) Western Concrete Pipe Company, a Colorado corporation;
- (14) Sherman Concrete Pipe Co., Jacksonville, Florida;
- (15) Massey Concrete Products Company, a Delaware corporation;
- (16) White Pipe Company, a Texas corporation;
- (17) American Concrete Pipe Company, Inc., a New York corporation and American Concrete Pipe Company, Inc., a New Jersey corporation;
- (18) Mid-South Concrete Pipe Company, a Tennessee corporation, and its wholly owned subsidiary Osceola Tile and Culvert Company, an Arkansas corporation;
- (19) Indiana Lock-Joint Concrete Pipe Company, an Indiana corporation;
- (20) Lake View Concrete Tile Company, an Iowa corporation;
- (21) Valley Concrete Pipe & Products Company, a California corporation;
- (22) Carolina Concrete Pipe Company, Inc., a North Carolina corporation;
- (23) Nevada Concrete Pipe Company, a Nevada corporation;
- (24) Collins Concrete and Steel Pipe Company, an Oregon corporation;
- (25) Hammond's, Inc., a Vermont corporation, and its subsidiary, Vermont Concrete Pipe Corp., a Vermont corporation;
- (26) Thomas Concrete Pipe Co., an Oklahoma corporation;
- (27) Seattle Concrete Pipe Company, Inc., a Washington corporation;

(28) Arey Pipe & Construction Co., a Texas corporation;

(29) Spokane Concrete Pipe Co., Inc., a Washington corporation.

II. Lime plants at the following locations:

Knoxville, Tenn. Kimballton, Va.,

The above plants were acquired as a result of the acquisition of the stock of the Standard Lime and Stone Company, a Maryland corporation.

III. Aggregates (crushed stone, sand and gravel) quarries, plants, or quarry sites, at the following locations:

Aberdeen, N.C. Rolesville, N.C.
Elm City, N.C. West End, N.C.
Garysburg, N.C. Greystone, N.C.
Goldsboro, N.C. Greensboro, N.C.
Linden, N.C. Le Grand, Iowa.
Neverson, N.C. Waterloo, Iowa.
Crab Tree, N.C.

The above listed quarries, plants and quarry sites, were acquired as a result of the acquisition of the following corporations and businesses, and constituted their principal assets:

(1) Bryan Rock and Sand Company, a North Carolina corporation;

(2) Buchanan Stone Company, Inc., a North Carolina corporation;

(3) Beu Limestone Company, an Iowa corporation;

(4) Northwestern Quarry Joint Venture, a company doing business in Iowa.

It is further ordered, That pending divestiture, respondent shall not make any changes in any of the machinery, buildings, equipment or other property of whatever description, of any of the listed plants, quarries or businesses, which shall impair their market value or present capacity for the production and for the sale of concrete pipe, lime, or aggregates (crushed stone, sand and gravel), or any other products they may be producing or selling, unless such market value or capacity is restored prior to divestiture.

It is further ordered, That the Martin-Marietta Corporation, in carrying out the divestitures above ordered, do so in such manner as to establish, insofar as possible, the above listed plants and properties as going concerns and effective competitors in the manufacture and sale of concrete pipe and aggregates (crushed stone, sand and gravel), and in the case of the lime plants, as a going concern or concerns, and as an effective competitor or competitors, in the production and sale of lime.

It is further ordered, That, for a period of ten (10) years from the date of service upon it of this order, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, any part of the share capital or other assets of any corporation engaged in the production and sale of concrete pipe, lime, or aggregates (crushed stone, sand and gravel), in the following geographic areas: (a) With respect to concrete pipe, anywhere in the United States; (b) with respect to lime, anywhere east of the Mississippi River; (c) with respect to

aggregates, anywhere in the States of North Carolina and Iowa, and in the counties of the States of Virginia, South Carolina, Georgia, Kansas, and Missouri listed below:

VIRGINIA

Pittsylvania.	Louisa.
Albemarle.	Orange.
Nelson.	Madison.
Buckingham.	Greene.
Fluvanna.	

GEORGIA

Columbia.	Candler.
McDuffie.	Bulloch.
Richmond.	Effingham.
Jefferson.	Evans.
Burke.	Liberty.
Emanuel.	Bryan.
Jenkins.	Chatham.
Screven.	McIntosh.

MISSOURI

Worth.	Nodaway.
Gentry.	

SOUTH CAROLINA

York.	Edgefield.
Lancaster.	Aiken.

KANSAS

Franklin.	Sumner.
Douglas.	Sedgwick.
Johnson.	Harvey.
Coffee.	Marion.
Osage.	Chase.
Shawnee.	Lyon.
Jefferson.	Jackson.
Leavenworth.	Pottawatomie.
Elk.	Wabaunsee.
Chautauqua.	Morris.
Cowley.	Geary.
Butler.	Riley.
Greenwood.	

It is further ordered, That, for a period of seven (7) years from the date of service upon it of this order, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, any part of the share capital or other assets of any corporation engaged in commerce, as "commerce" is defined in the Clayton Act, and in the production and sale of cement, anywhere in the States of the United States east of the eastern border of the States of Idaho, Utah and Arizona; provided, however, that nothing in this paragraph implies that any acquisition of a cement producing plant in the United States by Martin-Marietta Corporation west of the aforementioned line would be lawful.

It is further ordered, That respondent shall, within three months from the date of service upon it of this Order, submit in writing to the Federal Trade Commission its plan for carrying out the provisions of this Order, which shall include provision for submitting periodic compliance reports, subject to Commission approval.

Issued: March 12, 1963.

By the Commission, Commissioner MacIntyre not concurring.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 63-3616; Filed, Apr. 5, 1963; 8:49 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Bureau of Old-Age and Survivors Insurance, Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

Subpart B—Quarters of Coverage and Insured Status

Subpart B of Regulations No. 4 of the Social Security Administration (20 CFR 404.1 et seq.) is revised by amending § 404.101; combining the material in former §§ 404.103 and 404.104 into a new § 404.103 with substantive revision; adding new §§ 404.104 and 404.105; renumbering former §§ 404.105 and 404.106 as §§ 404.106 and 404.107 respectively but without substantive change; reorganizing the material in former §§ 404.107 and 404.108 into new §§ 404.108–404.113 with the addition of new material; and by renumbering former § 404.109 as § 404.114 with substantive addition. As revised, Subpart B reads as follows:

Sec.	
404.101	Insured status; general.
404.102	Quarter and calendar quarter defined.
404.103	Quarters of coverage.
404.104	Calendar quarters that cannot be quarters of coverage.
404.105	When limitations on crediting quarters of coverage for periods prior to 1951 are not applicable.
404.106	Quarters of coverage; allocation of wages of over \$50 paid in 1937.
404.107	Quarters of coverage; crediting self-employment income to calendar quarters.
404.108	Fully insured status; general.
404.109	Fully insured status; August 1961 and thereafter.
404.110	Fully insured status; after September 1960 and before August 1961.
404.111	Fully insured status; after August 1950 and before October 1960.
404.112	Fully insured status; prior to September 1950.
404.113	Fully insured status based on active military or naval service during World War II.
404.114	Currently insured status.

AUTHORITY: §§ 404.101 to 404.114 issued under secs. 205 and 1102, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, and 1302. Sections 404.102 to 404.106 also issued under sec. 213, 64 Stat. 504, as amended; 42 U.S.C. 413; §§ 404.108 to 404.114 also issued under sec. 214, 64 Stat. 505, as amended; 42 U.S.C. 414. Additional authority is cited in parentheses following the sections affected.

§ 404.101 Insured status; general.

The insured status of an individual is a basic factor in determining entitlement on his earnings record to monthly benefits, the lump-sum death payment, and the establishment of a period of disability. For example, an individual must be "fully insured" (see §§ 404.108–404.113) to qualify for old-age insurance benefits, either "fully" or "currently" insured (see § 404.114) for mother's insur-

ance benefits or the lump-sum death payment to be payable on his earnings account and, in the case of a woman, both "fully" and "currently" insured in order for husband's or widower's insurance benefits to be payable on her earnings account. An individual is "fully" or "currently" insured when he has acquired sufficient "quarters of coverage" (see § 404.103) to give him such status. If an individual is neither "fully" nor "currently" insured, no monthly benefit or lump-sum death payment is payable on the basis of his earnings record. Subpart D of this part explains which benefits are based on a fully insured status, which are based on a currently insured status, and which are based on both a "fully" and "currently" insured status.

§ 404.102 Quarter and calendar quarter defined.

The terms "quarter" and "calendar" are used interchangeably to mean a period of 3 calendar months ending March 31, June 30, September 30, or December 31 of any year.

§ 404.103 Quarters of coverage.

(a) *General.* A calendar quarter may be credited as a quarter of coverage if at least a specified minimum amount of wages are paid (or earned, under certain conditions, see paragraph (e) of this section) in such quarter, or if at least a specified amount of self-employment income is credited to such quarter, or if such quarter occurs in a year in which an individual has a specified amount of wages or self-employment income or a combination of both. However, certain calendar quarters may not be credited as quarters of coverage even though the wage or self-employment income requirements may be met in such quarters. Calendar quarters are credited as quarters of coverage in accordance with the rules in the following paragraphs of this section but subject to the limitations described in § 404.104. (See Subpart K for a definition of "wages" and "self-employment income.")

(b) *Quarters of coverage based on wages paid in, or self-employment income credited to, a calendar quarter.* Subject to the limitations in § 404.104, a quarter of coverage is a calendar quarter in which an individual:

(1) Has been paid \$50 or more wages (however, see paragraph (c) of this section where wages are paid for agricultural labor performed after 1954; and § 404.106 in case of wages paid in 1937); or

(2) Has been credited (in accordance with § 404.107) with \$100 or more of self-employment income.

(c) *Quarters of coverage based on wages paid for agricultural labor performed after 1954.* An individual is credited with quarters of coverage based on wages paid in a year for agricultural labor performed after 1954 in accordance with the following rules. If such wages paid in a year total:

(1) \$400 or more, then all quarters of that year which are not otherwise quarters of coverage, are quarters of coverage;

(2) \$300 or more but less than \$400, then the last three quarters of that year which can be, but which are not otherwise, quarters of coverage, are quarters of coverage;

(3) \$200 or more but less than \$300, then the last two quarters of that year which can be, but which are not otherwise, quarters of coverage, are quarters of coverage;

(4) \$100 or more but less than \$200, then the last quarter of that year which can be, but which is not otherwise, a quarter of coverage, is a quarter of coverage.

If an individual fails to meet (or fails to meet as early in the year as may otherwise be possible) the requirements for a fully or currently insured status, for entitlement to a computation or recomputation of his primary insurance amount, or to establish a period of disability, as the case may be, because of the assignment of quarters of coverage in a year as described in this paragraph, but would meet such requirements (or meet them earlier in the year) by assigning the quarters of coverage to different quarters of such year, the quarters of coverage shall be assigned to such different quarters: *Provided*, That such reassignment shall be only for the purposes of meeting such requirements.

(d) *Quarters of coverage based on wages paid, or self-employment income derived, in a year.* An individual is credited with quarters of coverage based on the amount of wages paid, or self-employment income derived, in a year or a combination of both, as follows:

(1) *Based on wages.* An individual is credited with a quarter of coverage for each quarter in a calendar year (subject to the limitations in § 404.104) if such quarter occurred in a calendar year:

(i) After 1958, and he has been paid wages equal to \$4,800 in such year;

(ii) After 1954 and prior to 1959, and he has been paid wages equal to \$4,200 in such year;

(iii) After 1950 and prior to 1955, and he has been paid wages equal to \$3,600 in such year;

(iv) Prior to 1951, and he has been paid wages equal to \$3,000 in such year and the conditions described in § 404.105 are met. If the conditions of § 404.105 are not met, then only those quarters in such year which occur after a quarter of coverage established in accordance with paragraph (b) (1) of this section, and prior to the quarter in which the individual became entitled to a primary insurance benefit, or died, will be credited as quarters of coverage.

(2) *Based on self-employment income, or combination of self-employment income and wages.* In a case in which an individual has self-employment income, or a combination of self-employment income and wages, during a taxable year, he is credited with a quarter of coverage for each calendar quarter wholly or partly in such taxable year (subject to the limitations in § 404.104) if such taxable year:

(i) Ends after 1958 and the total of his self-employment income derived, and wages paid, in such year equals \$4,800;

(ii) Ended after 1954 and prior to 1959 and the total of his self-employment income derived, and wages paid, in such year equals \$4,200;

(iii) Began after 1950 and ended prior to 1955 and the total of his self-employment income derived, and wages paid, in such year equals \$3,600.

(e) *Crediting quarters of coverage on the basis of when wages were earned; limited application.*—(1) *Crediting quarters of coverage based on wages earned.* The usual method of crediting quarters of coverage where wages are concerned is based on when the wages are paid (see paragraph (b) (1) of this section). For example, an individual who in January of a year is paid at least \$50 in wages for non-agricultural labor would be credited with a quarter of coverage for the calendar quarter January-March of that year even if the wages were earned in December of the previous year. However, where an individual, alive on January 1, 1955, attained age 65 (or, for months after October 1956, age 62 in the case of a woman) or died prior to July 1, 1957, and did not meet the requirements of §§ 404.108-404.112 (whichever is applicable) because of too few quarters of coverage but would have met such requirement if his quarters of coverage in the first calendar year in which he had any employment (as defined in Subpart K of this part) had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid, upon application for benefits filed after April 21, 1960 by such individual, or, if he is deceased, by his survivors for benefits or a lump-sum death payment payable on his earnings record, the quarters of coverage in such calendar year may be determined on the basis of the period during which such wages were earned, provided that the individual (or, where applicable, his survivors) furnishes proof satisfactory to the Administration of such wages earned by him. Any such wages paid that are reallocated on an earned basis in accordance with the provisions described in this paragraph may not be used in determining quarters of coverage on a paid basis for that or any subsequent calendar year. Further, the reallocation of wages described in this paragraph is solely for the purpose of determining quarters of coverage and shall not affect the allocation of wages for any other purpose.

(2) *Payment of benefits.* The provisions of subparagraph (1) of this paragraph are applicable only for the payment of monthly benefits for months after June 1957 and, in the case of lump-sum death payments, with respect to deaths occurring after June 1957. The requirements for filing applications for such benefits and lump-sum death payments within certain time limits, as provided in §§ 404.606, 404.607, and 404.338(b), shall not apply if the application is filed after April 1960 and prior to May 1961.

(f) *When a quarter of coverage is acquired.* A quarter of coverage based on wages paid or earned in a calendar quarter (see paragraphs (b) and (e) of this section) is acquired as of the day

in that calendar quarter on which the wages paid, or earned (as the case may be), in the quarter total at least \$50. A quarter of coverage based on wages paid for agricultural labor after 1954 and assigned to a calendar quarter in accordance with paragraph (c) of this section, is acquired as of the first day of such calendar quarter. A quarter of coverage based on self-employment income credited to a calendar quarter (see paragraph (b) of this section), is acquired as of the first day of the calendar quarter to which such self-employment income is credited. A calendar quarter credited as a quarter of coverage based on the amount of wages paid, or self-employment income derived, in a year (see paragraph (d) of this section) is acquired as of the first day of such calendar quarter.

§ 404.104 Calendar quarters that cannot be quarters of coverage.

There shall not be credited as a quarter of coverage:

(a) Any calendar quarter prior to the beginning of such quarter;

(b) Any calendar quarter beginning after the quarter in which the individual died;

(c) Any calendar quarter already credited as a quarter of coverage; or

(d) Any calendar quarter included in a period of disability established for the individual, except that the initial and last quarters of such period may be quarters of coverage. However, if the last quarter of a period of disability occurred prior to 1951, it may be credited as a quarter of coverage only if one of the conditions described in § 404.105 is met.

§ 404.105 When certain limitations on crediting quarters of coverage for periods prior to 1951 are not applicable.

(a) *Monthly benefits and lump sum.* The provisions of §§ 404.103(d)(1)(iv) and 404.104(d) apply without the limitation described therein in the case of monthly benefits and the lump-sum death payment based on the earnings record of an individual:

(1) Who becomes entitled to old-age or disability insurance benefits on the basis of an application filed after August 1960; or

(2) Who is (or would, but for the provisions of § 404.277, be) entitled to a recomputation of his primary insurance amount as described in § 404.262 or § 404.263 on the basis of an application filed after August 1960; or

(3) Who dies without becoming entitled to old-age or disability insurance benefits and (unless he dies currently insured but not fully insured) without leaving anyone entitled to survivors benefits or a lump-sum death payment based on his earnings record on the basis of an application filed prior to September 1960; or

(4) Who dies after August 1960 and whose survivors are (or would, but for the provisions of § 404.277, be) entitled to a recomputation of his primary insurance amount in accordance with § 404.271; or

(5) Who died prior to September 1960, and:

(i) Whose survivors are (or would, but for the provisions of § 404.277, be) entitled to a recomputation of his primary insurance amount as provided in § 404.271, and

(ii) No one was entitled to survivors benefits or the lump-sum death payment payable on his earnings record on the basis of an application filed prior to September 1960 nor was anyone entitled to such benefits for any month prior to September 1960 without the filing of an application; or

(6) Who dies and whose survivors are (or would, but for the provisions of § 404.277, be) entitled on the basis of an application filed after August 1960, to a recomputation of his primary insurance amount in accordance with § 404.270.

(b) *Period of disability.* The provisions of §§ 404.103(d)(1)(iv) and 404.104(d) apply without the limitation described therein in the case of an application to establish a period of disability filed after August 1960.

(c) *Effective month.* Where an individual is not fully insured except for the provisions of this section, no benefits shall be payable on the basis of his earnings record for any month prior to September 1960.

§ 404.106 Quarters of coverage; allocation of wages paid in 1937.

In 1937, employers reported wages paid their employees on a semi-annual basis (i.e., the periods of 6 months beginning January 1, 1937 and July 1, 1937) rather than on a quarterly basis as they have done since. Such wages must be allocated to the calendar quarters of 1937 to determine quarters of coverage in that year. Such allocation is made as follows:

(a) If wages of not less than \$100 were paid in any semiannual period in 1937, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period.

(b) If wages of less than \$100 were paid in any semiannual period in 1937, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such semiannual period the individual attained age 65 all of the wages paid in such period shall be deemed to have been paid before the individual attained age 65.

§ 404.107 Quarters of coverage; crediting self-employment income to calendar quarters.

For purposes of determining whether, in accordance with § 404.103(b)(2), a calendar quarter is a quarter of coverage, self-employment income is credited to calendar quarters as follows:

(a) *Calendar taxable year.* If the individual's taxable year is a calendar year, the self-employment income for such taxable year is credited equally to each quarter of such calendar year.

(b) *Fiscal or short taxable year.* If the individual's taxable year commences on a date other than January 1, or if it is less than a full calendar year, the self-employment income for such taxable year is credited equally to the cal-

endar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters, any part of which is in such taxable year. For rules applicable in determining quarters of coverage where an individual is credited with "maximum" earnings for a year based on self-employment income alone, or on a combination of self-employment income and wages, see § 404.103(d)(2).

(Sec. 212, 64 Stat. 504, as amended; 42 U.S.C. 412)

§ 404.108 Fully insured status; general.

(a) *Factors involved.* An individual is fully insured if he is credited with a required number of quarters of coverage. The number of quarters of coverage required depends generally on the following: the date the individual, if a man, attains age 65 or, if a woman, attains age 62 (for months before November 1956, the determining age for a woman was also age 65), or if death occurs before attainment of such age, the date of death; whether or not a period of disability has been established for the individual; and the insured status requirement in effect at the time the individual files application for benefits, is first eligible for benefits, or dies.

(b) *When fully insured status begins.* An individual is fully insured beginning with the month in which he acquires the last required quarter of coverage (see § 404.103(f) and §§ 404.109-404.112). Though fully insured under the statutory provisions in effect during a particular period an individual may not be fully insured under the statutory provisions in effect for a prior period and, in such case, no benefits would be payable for such prior period though benefits may be payable currently based on the later requirements. The following §§ 404.109-404.113, set forth the various fully insured status requirements and their period of applicability.

§ 404.109 Fully insured status; beginning August 1961.

(a) *Quarters of coverage requirement.* An individual is fully insured after July 1961, if credited with not less than:

(1) One quarter of coverage, whenever acquired, for each calendar year elapsing after 1950 or, if later, the year in which the individual attained age 21, and:

(i) In the case of a woman, before the year in which she attains age 62, or, if she is deceased and death occurred prior to attainment of age 62, before the year in which she died.

(ii) In the case of a man, before the year in which he would attain, or did attain age 65 or, if he is deceased, before the year in which he died if death occurred prior to attainment of age 65; or

(2) Forty quarters of coverage; or

(3) Six quarters of coverage and such individual died before 1951 and was not fully insured under the provisions in effect at the time he died.

(b) *Minimum quarters of coverage required for fully insured status under paragraph (a)(1) of this section.* Notwithstanding the provisions of paragraph (a)(1) of this section, no individual shall be fully insured under the provisions of

such paragraph (a) (1) if such individual is credited with less than six quarters of coverage.

(c) *Determining elapsed years for purposes of paragraph (a) (1) of this section.* In determining the number of elapsed years for purposes of paragraph (a) (1) of this section, any year, all or any part of which is included in a period of disability established for the individual is not counted as an elapsed year.

(d) *Applicability of the provisions of this section.* The provisions of this section apply in determining whether an individual is fully insured for purposes of (1) entitlement to monthly benefits for months after July 1961, based on application filed after February 1961; (2) to a lump-sum death payment where death occurs after July 1961; or (3) to establish a period of disability where application is filed after February 1961.

(e) *Table for determining quarters of coverage required for fully insured status.* The following table may be used to ascertain the number of quarters of coverage required for a fully insured status for benefits for months after July 1961 and for the lump-sum death payment where death occurs after July 1961. Instructions for use of the table are set forth in subparagraphs (1), (2), and (3) of this paragraph.

I. Individual born before Jan. 2, 1930—Year of attainment of age 62—women, age 65—men; year of death	II. Quarters of coverage required for fully insured status	III. Individual born after Jan. 1, 1930—Age in year of death
1957 and prior years.....	6	28 or younger.
1958.....	7	29.
1959.....	8	30.
1960.....	9	31.
1961.....	10	32.
1962.....	11	33.
1963.....	12	34.
1964.....	13	35.
1965.....	14	36.
1966.....	15	37.
1967.....	16	38.
1968.....	17	39.
1969.....	18	40.
1970.....	19	41.
1971.....	20	42.
1972.....	21	43.
1973.....	22	44.
1974.....	23	45.
1975.....	24	46.
1976.....	25	47.
1977.....	26	48.
1978.....	27	49.
1979.....	28	50.
1980.....	29	51.
1981.....	30	52.
1982.....	31	53.
1983.....	32	54.
1984.....	33	55.
1985.....	34	56.
1986.....	35	57.
1987.....	36	58.
1988.....	37	59.
1989.....	38	60.
1990.....	39	61.
1991 and thereafter.....	40	62 or older.

(1) *Individual born before January 2, 1930—Column I of Table.* The number of quarters of coverage required for a fully insured status by an individual born before January 2, 1930, appears in Column I on the same line as that in Column I on which appears the year in which such individual will attain (or did attain) age 62, if a woman, or age 65, if a man, or, if such individual died before attaining such age, on which appears the year of death. (However, see subparagraph (3) of this paragraph if the individual had a period of disability established.)

(2) *Individual born after January 1, 1930—Column III of Table.* The number of quarters of coverage required for a fully insured status by an individual born after January 1, 1930, appears in Column II on the same line as that in Column III on which appears such individual's age in the year in which such individual died. (However, see subparagraph (3) of this paragraph if such individual had a period of disability established.)

(3) *Established period of disability to be excluded.* In any case in which an individual had a period of disability established which is to be excluded in determining the number of quarters of coverage required for a fully insured status, the number of quarters of coverage determined in accordance with subparagraphs (1) or (2) of this paragraph is reduced by one for each year all, or any part, of which falls within the established period of disability.

§ 404.110 Fully insured status; October 1960 to August 1961.

(a) *Quarters of coverage requirement.* An individual is fully insured after September 1960 if credited with not less than:

(1) One quarter of coverage, whenever acquired, for every three calendar quarters elapsing:

(i) After 1950 or, if later, the year in which such individual attained age 21, and

(ii) Before the year in which such individual died or, if earlier, the year in which such individual attained age 62, if a woman, or age 65, if a man; or

(2) Six quarters of coverage, and such individual died before 1951 and was not fully insured under the provisions in effect at the time he died.

(b) *Minimum quarters of coverage requirement for fully insured status under paragraph (a) (1) of this section.* Notwithstanding the provisions of paragraph (a) (1) of this section, no individual shall be fully insured under the provisions of such paragraph (a) (1) if such individual is credited with less than six quarters of coverage.

(c) *Determining elapsed quarters for purposes of paragraph (a) (1) of this section.* In determining the number of elapsed quarters for purposes of paragraph (a) (1) of this section any calendar quarter all or any part of which is included in a period of disability established for the individual is not counted as an elapsed quarter unless such quarter is a quarter of coverage (see §§ 404.103 and 404.104(d)). In any case in which the number of elapsed quarters is not a multiple of three, it shall be reduced to the next lower multiple of three.

(d) *Applicability of the provisions of this section.* The provisions of this section apply in determining whether an individual is fully insured for purposes of entitlement to monthly benefits for months after September 1960 and before August 1961, based on application filed after August 1960, in cases of a lump-sum death payment where death occurred after September 1960 and before August 1961, and to establish a period of disability based on application filed after September 1960 and before March 1961.

§ 404.111 Fully insured status; after August 1950 and before October 1960.

(a) *Quarters of coverage requirement; general.* An individual is fully insured if such individual:

(1) Is credited with one quarter of coverage, whenever acquired, for each two calendar quarters elapsing:

(i) After 1950 or, if later, after the quarter in which such individual attained age 21, and

(ii) Before the quarter in which such individual died or, if earlier, before the quarter in which such individual attained age 65, if a man or, if a woman, age 65 for benefits for months prior to November 1956, age 62 for benefits for months after October 1956 and for a lump-sum death payment where death occurred after October 1956; or

(2) Did not die before January 1955 and had acquired as quarters of coverage, all but four (or fewer) of the calendar quarters elapsing after 1954, and up to the later of:

(i) July 1, 1957; or

(ii) The first day of the calendar quarter beginning after July 1, 1957, in which such individual, if a man, attained age 65 or, if a woman, attained age 62, or in which such individual died, whichever occurred earlier; or

(3) Died before September 1950 and was credited with not less than six quarters of coverage and was not fully insured under the rules in effect at the time of death. (See also paragraph (d) of this section for restriction on applicability of this subparagraph.)

(b) *Minimum quarters of coverage requirement.* Notwithstanding the provisions of paragraph (a) (1) or (2) of this section, no individual shall be fully insured under the provisions of such paragraph (a) (1) if such individual is credited with less than six quarters of coverage whenever acquired or, in the case of such paragraph (a) (2), if such individual has not acquired as quarters of coverage at least six of the calendar quarters in the period specified in paragraph (a) (2) of this section.

(c) *Determining elapsed quarters.* In determining the number of elapsed quarters for purposes of paragraph (a) (1) of this section any calendar quarter, all or any part of which is included in a period of disability established for the individual, is not counted as an elapsed quarter unless such quarter is a quarter of coverage (see §§ 404.103 and 404.104(d)). In any case in which the number of elapsed quarters is odd, such number is reduced by one.

(d) *Applicability of the provisions of this section.* The provisions of this section apply (1) in determining whether an individual is fully insured for entitlement to monthly benefits for months after August 1950 and before October 1960, except that the provisions of paragraph (a) (3) of this section apply only for benefits for months after August 1954 and prior to October 1960 but do not apply in determining entitlement during this period of a former wife divorced to mother's insurance benefits (see Subpart D); (2) for purposes of entitlement to a lump-sum death

payment in cases of deaths occurring after August 1950 and before October 1960; and (3) for purposes of entitlement to a period of disability based on application filed after December 1954 and before October 1960.

§ 404.112 Fully insured status; individual died before September 1950.

(a) *Quarters of coverage requirement.* An individual who died before September 1950, is fully insured if credited with not less than one quarter of coverage for each two calendar quarters elapsing:

- (1) After 1936 or, if later, the quarter in which he attained age 21; and
- (2) Before the quarter in which he died or, if earlier, the quarter in which he attained age 65.

(b) *Minimum quarters of coverage requirement.* Notwithstanding the provisions of paragraph (a) of this section, no individual shall be fully insured if such individual is credited with less than six quarters of coverage.

(c) *Determining elapsed quarters.* If the number of elapsed quarters, for purposes of paragraph (a) of this section, is odd, such number is reduced by one.

(d) *Applicability of provisions in this section.* The provisions of this section apply in cases where the individual died prior to September 1950, without becoming entitled to old-age insurance benefits and application is filed after August 1950 for survivors insurance benefits beginning in the period after August 1950 and before September 1954; except that in the case of a former wife divorced filing application for mother's insurance benefits, the provisions of this section apply for benefits beginning in the period after August 1950 and before October 1960.

§ 404.113 Fully insured status based on active military or naval service during World War II.

An individual not otherwise fully insured, who served in the active military or naval service of the United States during World War II and who died within 3 years after separation from such service and before July 27, 1954, is deemed to have died fully insured if the conditions described in § 404.1301 and §§ 404.1315-404.1321 are met.

§ 404.114 Currently insured status.

(a) *Period for determining currently insured status.* A currently insured individual is one who has acquired not less than six quarters of coverage during any one of the following periods:

- (1) The 13-quarter period ending with and including the quarter in which he died;
- (2) The 13-quarter period ending with and including the quarter in which he most recently became entitled to disability insurance benefits (however, this provision is applicable only with respect to monthly benefits for months after August 1958 based on application filed after August 27, 1958); or
- (3) The 13-quarter period ending with and including the quarter in which he became entitled to old-age insurance benefits after August 1950.

(b) *Quarters not counted as part of the 13-quarter period.* In determining the 13-quarter period for purposes of this section, any quarter, all, or any part, of which is included in a period of disability established for the individual is not counted as part of the 13-quarter period unless such quarter is a quarter of coverage (see §§ 404.103 and 404.104(d)).

Effective date. The foregoing amendments shall become effective on the date of publication in the FEDERAL REGISTER.

Dated: March 22, 1963.

[SEAL] ROBERT M. BALL,
Commissioner of Social Security.

Approved: April 1, 1963.

ANTHONY J. CELEBREZZE,
Secretary of Health,
Education, and Welfare.

[F.R. Doc. 63-3605; Filed, Apr. 5, 1963;
8:47 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

Subpart D—Listing of Color Additives for Food Use Exempt From Certification

β -APO-8'-CAROTENAL; LISTING FOR FOOD USE; EXEMPTION FROM CERTIFICATION

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706(b)(1), (c)(2), 4 Stat. 403; 21 U.S.C. 376(b)(1), (c)(2)), and under the authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the Commissioner of Food and Drugs, based on a petition filed by Hoffman-La Roche Inc., Nutley, New Jersey, and other relevant material, finds that β -apo-8'-carotenal when used in accordance with the conditions prescribed in this order is safe for use in or on foods and that certification is not necessary for the protection of the public health. *Therefore, it is ordered,* That Part 8 be amended by adding to Subpart D the following new section:

§ 8.302 β -Apo-8'-carotenal.

(a) *Identity.* (1) The color additive is β -apo-8'-carotenal.

(2) *Diluents in color additive mixtures:* Color additive mixtures made with β -apo-8'-carotenal may contain as diluents only those substances that, if used in foods, are not food additives within the meaning of section 201(s) of the act; or, if they are food additives, are authorized for a specific use or uses under the provisions of Part 121 of this chapter.

(b) *Specifications* β -apo-8'-carotenal conforms to the following specifications:

Physical state—Solid.
1 percent solution in chloroform—Clear.
Melting point (decomposition)—136°C.-140°C. (corrected).

Loss of weight on drying—not more than 0.2 percent.
Residue on ignition—not more than 0.2 percent.
Lead (Pb)—not more than 10 parts per million.
Arsenic (As)—1 part per million.
Assay (spectrophotometric)—96-101 percent.

(c) *Uses and restrictions.* The color additive may be safely used for coloring foods generally, subject to the following restrictions:

(1) The quantity of β -apo-8'-carotenal does not exceed 15 milligrams per pound of solid or semisolid food or 15 milligrams per pint of liquid food.

(2) It may not be used to color foods standardized pursuant to section 401 of the act where the use of added color is not authorized.

(d) *Labeling requirements.* The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall bear, in addition to the other information required by the act and other regulations in this chapter:

(1) The name of the color additive, β -apo-8'-carotenal, and its quantity.

(2) The names of all other ingredients.

(3) Adequate directions to provide a final product complying with the limitations prescribed in paragraph (c)(1) of this section.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirement of section 706(c) of the act.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing, and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed preferably in quintuplicate.

Effective date. This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER, except as to any provision that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 701, 52 Stat. 1055 as amended; 706 (b)(1), (c)(2), 74 Stat. 399, 402; 21 U.S.C. 371; 21 U.S.C.A. 376 (b)(1), (c)(2))

Dated: April 1, 1963.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 63-3604; Filed, Apr. 5, 1963;
8:47 a.m.]

SUBCHAPTER C—DRUGS

PART 141d—CHLORAMPHENICOL AND CHLORAMPHENICOL-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

Chloramphenicol; Testing Method

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tests and methods of assay for chloramphenicol (21 CFR 141d.301, 141d.302, 141d.303, 141d.307) are amended as follows:

1. Section 141d.301 is amended by changing paragraph (a) (8) and (9) as set forth below and by adding to paragraph (a) a new subparagraph (10):

§ 141d.301 Chloramphenicol.

(a) * * *

(8) *Turbidimetric assay.* In lieu of the plate-assay method described in subparagraph (7) of this paragraph, the sample may be assayed for potency by the following turbidimetric assay:

(i) *Test culture and media.* The test organism is *Escherichia coli* (ATCC 10536). Maintain the test organism on the agar described in § 141a.1(b) (1) of this chapter. For use in the assay, prepare a suspension of the organism every 2 weeks, as follows: Transfer the organism to a fresh agar slant and incubate overnight at 37° C. Wash the growth from the slant with the aid of 2 milliliters of sterile sodium chloride solution and sterile glass beads onto a Roux bottle containing 250 milliliters of the maintenance medium. Incubate overnight at 37° C. and then harvest the growth with 50 milliliters of sterile sodium chloride solution and sterile glass beads. Standardize this suspension by determining the dilution that will permit 25-percent light transmission in a photoelectric colorimeter, using a 580-millimicron filter and an 18-millimeter diameter test tube as an absorption cell. Prepare the daily inoculum by adding 2 milliliters to 10 milliliters of the stock suspension to each liter of nutrient broth, prepared as directed in § 141a.1(b) (3) of this chapter, needed for the test.

(ii) *Working standard and solutions.* Dissolve a weighing of the working standard in sufficient ethyl alcohol to give a solution of 10,000 micrograms per milliliter. Further dilute in 1 percent phosphate buffer, pH 6.0, to give a stock solution of 1,000 micrograms per milliliter. This stock solution may be used for 1 month if stored in the refrigerator. Make daily dilutions of the stock solution with 1 percent phosphate buffer, pH 6.0, to obtain concentrations of 2.00, 2.24, 2.50, 2.79, and 3.12 micrograms per milliliter. Add 1.0 milliliter of each such concentration to each of three 16 millimeters x 125 millimeters (outside dimension) test tubes.

by inspection or by means of the following equations:

$$L = \frac{3a + 2b + c - e}{5},$$

$$H = \frac{3e + 2d + c - a}{5},$$

where:

L = Absorbance value for the lowest concentration of the standard curve.

H = Absorbance value for the highest concentration of the standard curve.

a, b, c, d, e = average absorbance values for each concentration of the standard curve.

Plot the values obtained for L and H and connect the points with a straight line. Average the absorbance values for the sample and read the chloramphenicol concentration from the standard curve. Multiply the concentration by appropriate dilution factors to obtain the chloramphenicol content of the sample.

(9) *Spectrophotometric method.* In lieu of the biological assay methods described, the following method may be used: Dissolve the working standard and the sample to be tested in sufficient water to give solutions containing 20 micrograms per milliliter. Warm if necessary to hasten solution. When cool, determine the absorbance of each solution in a suitable spectrophotometer at 278 millimicrons compared with distilled water as a blank. Calculate the absorptivity as follows:

$$\text{Absorptivity} = \frac{\text{Absorbance at 278 millimicrons} \times 1,000}{\text{Milligrams of sample (in 100 milliliters)}}$$

Calculate the potency of the sample as follows:

$$\frac{\text{Absorptivity of sample}}{\text{Absorptivity of standard}} \times 1,000 = \text{Micrograms of chloramphenicol per milligram.}$$

(10) *Chloramphenicol content.* The potency of chloramphenicol is satisfactory, when assayed by the methods described in this section, if the immediate containers contain 85 percent of the number of grams they are represented to contain.

§ 141d.302 [Amendment]

2. In § 141d.302 *Chloramphenicol capsules* * * *, paragraph (a) is amended by changing the phrase "except subparagraphs (8) and (9)" in the first sentence to read "except subparagraphs (9) and (10)".

§ 141d.303 [Amendment]

3. In § 141d.303 *Chloramphenicol ointment* * * *, the introduction to the section is amended by changing the phrase "except § 141d.301(a) (8) and (9)" to read "except § 141d.301(a) (9) and (10)".

§ 141d.304 [Amendment]

4. In § 141d.304 *Chloramphenicol ophthalmic*, paragraph (a) is amended by changing the phrase "except § 141d.301(a) (9)" in the first sentence to read "except § 141d.301(a) (10)".

§ 141d.307 [Amendment]

5. In § 141d.307 *Chloramphenicol solution*, paragraph (a) is amended as follows:

a. In paragraph (a) (1), the phrase "except subparagraphs (8) and (9)" are changed to read "subparagraphs (9) and (10)".

b. In paragraph (a) (2), the phrase "except subparagraph (9)" in the first sentence is changed to read "except subparagraph (10)".

Since the amendments included in this order provide an alternative and equally efficient method for the assay of chloramphenicol drugs and do not restrict the use of the methods heretofore provided, notice and public procedure are not deemed necessary in this instance.

Effective date. This order shall become effective 30 days from the date of its publication in the FEDERAL REGISTER. (Sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357)

Dated: April 1, 1963.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 63-3603; Filed, Apr. 5, 1963; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2932]

[Nevada 013136 and 041789]

NEVADA

Partly Revoking Public Land Order No. 1632 of May 7, 1958, and Ex- tending the Jurisdiction and Use Otherwise Granted by That Order

Correction

In F.R. Doc. 63-1615, appearing at page 1423, of the issue for Thursday, February 14, 1963, the entry in the land description reading "Tps. 26, 27, 38 and 39 N., R. 28 E. (unsurveyed)", should be corrected to read "Tps. 36, 37, 38, and 39 N., R. 28 E., (unsurveyed)".

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 6646]

PART 301—PROCEDURE AND ADMINISTRATION

Inspection of Returns by Possessions of the United States

Pursuant to sections 6103(a) and 6106 of the Internal Revenue Code of 1954 (68A Stat. 753, 756; 26 U.S.C. 6103(a), 6106) and the Executive order¹ signed this date concerning inspection of returns by possessions of the United States, paragraph (d) of § 301.6103(a)-1 of the Regulations on Procedure and Administration (26 CFR Part 301), as prescribed by Treasury Decision 6543, approved January 17, 1961, is amended to extend the rules provided in such paragraph for inspection of returns by officials of the District of Columbia and the Commonwealth of Puerto Rico to inspection of returns by officials of possessions of the United States. The amended provision reads as follows:

§ 301.6103(a)-1 Inspection of returns by certain classes of persons and State and Federal government establishments pursuant to Executive order.

(d) *Inspection by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of returns in respect of certain taxes*—(1) *Inspection of estate and gift tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.* Returns and notices in respect of estate tax imposed by chapter 11 of the Code and returns in respect of gift tax imposed by chapter 12 of the

Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration, provided a like cooperation is given by the State, District of Columbia, the Commonwealth of Puerto Rico, or the possession to the Commissioner and his representatives with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, Commonwealth of Puerto Rico, or possession for use in the administration of the Federal tax laws.

(2) *Inspection of unemployment tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.* Returns in respect of the unemployment tax imposed by chapter 23 of the Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, provided (i) such government has a law certified to the Secretary as having been approved in accordance with section 3304, and (ii) the inspection is solely for the purpose of administering such law.

(3) *Inspection of excise tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.* Returns in respect of the excise taxes imposed by chapter 5 (tax on transfers to avoid income tax); chapter 32 (manufacturers excise taxes); subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively); and subchapter B of chapter 37 (tax on coconut and palm oil) may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration.

(4) *Inspection of income tax returns by the District of Columbia, the Commonwealth of Puerto Rico, or possessions.* Returns in respect of income tax imposed by chapter 1, 2, 3, or 6 of the Code, may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration.

(5) *Applications for inspection*—(i) *In general.* Application for the inspection provided for in subparagraph (1), (2), (3), or (4) of this paragraph shall

be made in writing and signed by the governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possessions, and shall be addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The application shall state—

(a) The title of the official, body, or commission by whom or which inspection is to be made;

(b) By specific reference, the law of the State, District of Columbia, Commonwealth of Puerto Rico, or possession which such official, body, or commission is charged with administering and the law under which he or it is so charged;

(c) The purpose for which the inspection is to be made; and

(d) If inspection of estate or gift tax returns is requested, that the State, District of Columbia, Commonwealth of Puerto Rico, or possession, as the case may be, gives to the Commissioner and his representatives like cooperation with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, Commonwealth of Puerto Rico, or possession, for use in the administration of the Federal tax laws.

(ii) *Returns filed in internal revenue district within or including State or other entity requesting inspection*—(a) *General inspection.* Upon application by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, permission may be granted for general inspection of returns of the taxes specified in subparagraph (1), (2), (3), or (4) of this paragraph which are filed in an internal revenue district within or including such State or District or, in the case of the Commonwealth of Puerto Rico or a possession, with the Director of International Operations. If such general inspection is desired, the application made to the Commissioner in accordance with subdivision (i) of this subparagraph shall include a statement that general inspection is desired of a specified class or classes of returns (for example, estate tax returns, gift tax returns, etc.). Permission granted to a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession for the general inspection provided for in this subdivision shall, except as hereinafter provided in the case of unemployment tax returns continue in effect until such time as the Secretary or the Commissioner or the delegate of either, by written notice to the governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possession, provides that such inspection will be permitted only on the basis of periodic applications therefor. Permission for general inspection of unemployment tax returns will terminate without notice at such time as the State, District of Columbia, Commonwealth of Puerto Rico, or possession ceases to have a law certified to the Secretary as having been approved in accordance with section 3304. The governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possession, as the case may be, shall supply in writing to the internal

¹ See Title 3, Executive Order 11102, *supra*.

revenue officer (district director or Director of International Operations) with whom the returns to be inspected were filed a list of the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application to the Commissioner, and shall keep such list current by appropriate deletions or additions as may be necessary.

(b) *Inspection of specific returns.* Permission granted pursuant to (a) of this subdivision for general inspection of returns of a particular tax includes permission to inspect specifically identified returns of such tax when desired. However, if a State, the District of Columbia, the Commonwealth of Puerto Rico, or possession is interested only in examining certain returns of particular taxpayers, the application for inspection of such returns shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision, shall state the name and address of each taxpayer whose return or returns it is desired to inspect, the kind of tax reported on each such return, the taxable period covered by each such return, and the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application.

(iii) *Returns filed in other internal revenue districts.* In the case of returns filed in an internal revenue district other than one within or including the State or District of Columbia requesting inspection or, if the inspection is requested by the Commonwealth of Puerto Rico or a possession, filed elsewhere than with the Director of International Operations, permission for the inspection provided for in subparagraphs (1), (2), (3), and (4) of this paragraph will be granted only with respect to specifically identified returns. The application for such inspection shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision and in subdivision (ii) (b) of this subparagraph, shall specify the internal revenue district or office in which the returns to be inspected are believed to have been filed.

(6) *Time and place of inspection.* A convenient time and place for the inspection of returns permitted under this paragraph will be arranged by the internal revenue officer (district director or Director of International Operations) with whom the returns were filed.

(7) *Cross reference.* For other provisions relating to inspection of returns on behalf of States or political subdivisions thereof, see section 6103(b) and § 301.6103(b)-1.

Because this Treasury decision constitutes a general statement of policy and establishes rules of Departmental practice and procedure, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective

date limitation of section 4(c) of that Act.

This Treasury decision shall be effective upon its filing for publication in the FEDERAL REGISTER.

DOUGLAS DILLON,
Secretary of the Treasury.

Approved: April 4, 1963.

JOHN F. KENNEDY,
The White House.

[F.R. Doc. 63-3704; Filed, Apr. 5, 1963;
10:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER W—AIR FORCE PROCUREMENT INSTRUCTION

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Subchapter W of Title 32 is amended as follows:

PART 1001—GENERAL PROVISIONS

Subpart C—General Policies

Revise § 1001.360 (b) to read as follows:

§ 1001.360 Requests from foreign entities for information as to acquisition of production and sales rights to United States military end items.

(b) This section applies to AFSC procurement activities and AFLC field procurement activities assigned prime class procurement, all major overseas commands, Air Procurement Region, Far East (APRFE), and Air Procurement Region, Europe (APRE).

Subpart D—Procurement Responsibility and Authority

Revise § 1001.453 (m) (2) to read as follows:

§ 1001.453 Delegations of authority.

(m) * * *

(2) Contractual instruments increasing fund obligations under partially funded contracts (see paragraph (1) (1) and (2) of this section) when not exceeding the firmly negotiated total cost of the program as stated in the prime contract.

Subpart L—Specifications, Plans, and Drawings

Revise § 1001.1203 to read as follows:

§ 1001.1203 Availability of specifications, plans, and drawings.

(a) No implementation.

(b) It is the responsibility of the PCO to assure that applicable specifications, plans, and drawings can, in fact, be obtained from the stated locations.

(c) It is the responsibility of the PCO to assure that applicable specifications, plans, and drawings are, in fact, available for examination at the stated locations. At least one copy of each referenced drawing, plan or specification will

be maintained on file specifically for examination by prospective contractors at the AF installation which issues the IFB or RFP prior to such issuance.

PART 1002—PROCUREMENT BY FORMAL ADVERTISING

Subpart B—Solicitation of Bids

1. Revise § 1002.201 as follows:

§ 1002.201 Preparation of invitations for bids.

(a) * * *

(2) to (13) No implementation.

(14) *Use of Government property in the bidder's possession.* (Applicable only to AFLC/AFSC central procurement IFBs). Use of Government property in the bidder's possession under a facilities contract or other agreement independent of the IFB on a "no charge for use," "rent-free," or other no charge basis is not permitted. The following provision will be inserted in all AFLC/AFSC central procurement IFBs:

(15)-(16) No implementation.

(17) * * *

(ii) *Buy American certificate.* See §§ 6.104-3 and 6.204-2 of this title and §§ 1006.104-3 and 1006.204-2 of this subchapter.

(iii) * * *

(a) Invitations for bids shall provide for progress payments in the manner and under the circumstances set forth in § 163.73, Subchapter E of this title.

(b) Whenever the contracting officer determines that progress payments are not appropriate in connection with a particular procurement, according to the criteria set forth in § 163.73 Subchapter E of this title, the following statement will be included in the IFB:

Progress payments are not available under this invitation for bid. Bids conditioned upon provision for progress payments will be considered nonresponsive. This does not preclude payments for partial deliveries as otherwise authorized in the General Provisions.

(iv) *Advance payments.* The policy and procedures for advance payment provisions are contained in § 163.23 and Subpart D, Part 163, Subchapter E of this title.

(ix) *Financial and technical ability.* See § 1001.904-1 of this subchapter for applicable clause. Also, see § 1001.902 (b) of this subchapter relative to requirements for Special Source Surveys and § 1001.951 of this subchapter for applicable procedures.

(xii) * * *

Notice To Bidders (May 1957)

(xiii) *Percentage of subcontracting.* When a Facility Capability Report is contemplated as prescribed in § 1001.92-1(a) of this subchapter, the IFB will contain the following provision:

Bidder represents that the estimated percentage of subcontracting contemplated on

this procurement is ----- percent. (Dec. 1954)

(18) *General provisions or conditions.* (i) The IFB will include general provisions according to the appropriate subpart of Part 7 of this title and Part 1007 of this subchapter, and any special conditions necessary to describe the Government requirements fully.

(iii) IFBs for sealed bid sales will be prepared according to instructions contained in paragraph 14, chapter 11, volume VI, AFM 67-1, except that IFBs and contracts for the disposal of edible garbage will also contain the following provision:

(Nov. 1958)

(19)-(25) No implementation.

(b) * * *

(1)-(20) No implementation.

(21) * * *

(iii) No implementation.

(iv) *First article approval.* See § 1007.4020 of this subchapter for sample provision. Where it is known that one or more sources have previously furnished the Government articles subject to first article approval, the schedule may provide for bids to be submitted on one of two bases as applicable: Bid "A" (First Article, Approval Required); Bid "B" (First Article, Approval Not Required). The following provisions will then be inserted in the IFB schedule following the provision in § 1007.4020 of this subchapter:

Bidders who have previously furnished to the Government the articles referred to in item ----- above shall submit bid on Bid "B" which does not include compliance with the above First Article provision.

Bids submitted under Bid "A" (First Article, Approval Required) or under Bid "B" (First Article, Approval Not Required) are equally acceptable to the Government, as applicable, and award will be made thereon with the best interest of the Government considered. (Feb. 1957).

(vii) *Data requirements.* See § 1009.202-1(a) of this subchapter.

2. Revise § 1002.202-1 to read as follows:

§ 1002.202-1 Bidding time.

Where bidding time of less than 15 calendar days when procuring standard commercial articles or less than 30 calendar days when procuring other than standard commercial articles is contemplated, written authorization will be obtained by the contracting officer from the director or deputy director of procurement and production at AMC field procurement activities (Director or Deputy Director of Contract Support at AMCASC) or the chief or deputy chief of base procurement offices. AFLC AMA directors of procurement and production may redelegate this authority to positions not lower than two levels above the contracting officer. The contract file will be documented accordingly.

3. Revise §§ 1002.205-51(e) and 1002.250(a) as follows:

§ 1002.205-51 *Commodity class catalogs (commodity lists).*

(e) Each issuing activity will make automatic distribution of sufficient copies of each commodity class catalog or commodity lists and revisions thereto to small business specialists at CMDs and CMOs and to contractors relations activities at AFLC field procurement activities to facilitate servicing interested suppliers as provided in § 1002.205(b). In addition, two copies each will be sent to AFLC (MCPKC), and to the AF-MIPR liaison offices listed in AFLCM 170-1, as well as other distribution required.

§ 1002.250 *Information to be furnished prospective bidders.*

(a) Information regarding supplies or service for which bids have been invited will be furnished on application to all potential bidders desiring it, except that information concerning classified projects will be furnished only as authorized in AFR 205-1 (Safeguarding Military Information). (For information to bidders, see § 1002.408). Each IFB and RFP will carry an attachment quoting only the small business definitions in §§ 1.701-1 and 1.701-4 of this title which are applicable to the specific procurement involved. The definition shown in § 1.701-1(c) of this title applies to all procurements.

Subpart D—Opening of Bids and Award of Contract

Revise § 1002.404-1 to read as follows:

§ 1002.404-1 *Cancellation of invitation after opening.*

(a) No implementation.

(b) (1) Prior to cancellation of an IFB, review and approval will be obtained by the contracting officer from the director or deputy director of procurement and production at an AFLC AMA or the 2709th Vehicle Control Group (VCG); from the director or deputy director of procurement at an AFSC division; from the director of procurement at an AFSC center; from the Director, Office of Procurement at the Office of Aerospace Research (OAR); or in the case of other major commands and WPAFB, from the chief of the purchasing activity. AFLC AMA directors of procurement and production may redelegate this authority to positions not lower than two levels above the contracting officer. This review and approval will be accomplished for:

(i) Determining whether the proposed cancellation is in fact required.

(ii) Attempting to preclude cancellation.

(2) Prior to readvertising supplies or services previously detailed on canceled IFB's, review and approval will be secured as set forth in subparagraph (1) of this paragraph. This review and approval will be accomplished for insuring that readvertising actions are firm and complete.

(c) Failure to resolve the administrative difficulties and effect award of the contract(s) to the lowest responsible bidder prior to the expiration of the bid acceptance period (or any unqualified extensions thereto) will not be cause for

rejection of all bids and readvertisement unless the delay in making award or the difference in price between the lowest responsive bid and the next lowest responsive bid is unreasonable.

PART 1003—PROCUREMENT BY NEGOTIATION

Subpart A—Use of Negotiation

1. In § 1003.101-50(c), revise subparagraph (2) to read as follows:

§ 1003.101-50 *Requests for proposals (RFPs).*

(c) * * *

(2) Requirements which do not meet the criteria of subparagraph (1) of this paragraph, a minimum time of 30 days will normally be allowed for submission of proposals. When a period of less than 30 days is to be allowed, written authorization will be obtained by the contracting officer from the director or deputy director of procurement and production at AFLC activities, directors or deputy directors of procurement (or comparable level) at AFSC activities and OAR, or the chief or deputy chief of base procurement officers. AFLC AMA directors of procurement and production may redelegate this authority to positions not lower than two levels above the contracting officer. The contract file will be documented accordingly.

2. Revise §§ 1003.103 (a) and (b); 1003.106 and 1003.110 as follows:

§ 1003.103 *Records and reports of negotiated contracts.*

(a) *Records for reporting purposes.* See Part 1057 of this subchapter.

(b) *Records for individual negotiated contracts.* * * *

§ 1003.106 *Award information to unsuccessful offerors.*

(a) No implementation.

(b) Additional information: Replies pursuant to § 3.106(b) of this title will be signed by the chief or deputy chief of the concerned buying division or office.

§ 1003.110 *Solicitations for informational or planning purposes.*

See § 1001.309.

3. Add new § 1003.112 as follows:

§ 1003.112 *Disclosure of mistakes after award.*

See § 2.406-4 of this title and § 1002.406-4 of this subchapter.

Subpart B—Circumstances Permitting Negotiation

1. Revise § 1003.202-3 as follows:

§ 1003.202-3 *Limitation.*

The contracting officer will require the initiating activity to furnish him written justification of the circumstances of the exigency he feels is essential in case he does not have sufficient personal knowledge of the facts constituting the exigency. This justification will specifically include a statement of the injury that would be suffered by the Government, financially or otherwise, if the supplies

or services were not furnished by a certain date.

§§ 1003.203; 1003.204-1; 1003.204-2; 1003.207-1 [Deletion]

2. Delete §§ 1003.203, 1003.204-1, 1003.204-2, and 1003.207-1.

3. Add new § 1003.204-50 as follows:

§ 1003.204-50 Procurement of expert and consultant services by contract.

The following procedures will be observed to obtain authority to procure expert and consultant services regardless of the negotiation authority used:

(a) For management-engineering and miscellaneous personal or professional services other than architect-engineer (see AFR 25-4 (Expert and Consultant Services)).

(b) For professional nonpersonal architect-engineer services (see AFR 85-8 (Selecting Architect-Engineers for Professional Services by Negotiated Contracts)).

4. Revise § 1003.207-2(a) as follows:

§ 1003.207-2 Application.

(a) In addition to meeting the two requirements in § 3.207-2 of this title, the proposed procurement must concern supplies which are authorized for base procurement, or central procurement type items for which specific base procurement authority has been obtained.

5. Section 1003.210-2 is revised as follows:

§ 1003.210-2 Application.

* * * *

(b) No implementation.

* * * *

(d)-(1) No implementation.

* * * *

(n)-(x) [Reserved]

(y) When the contemplated procurement is for parts or components being procured as reenlistment spare parts that are coded central procurement and it is not economically practicable to research for, or review data in the following categories:

(1) Identical items where the individual value of such items on an individual contract (or call) is estimated to be \$500 or less.

(2) Identical items where the total value of such items on an individual contract (or call) is estimated to be over \$500 but less than \$2,500, and two or more sources are known.

6. Revise § 1003.210-3 as follows:

§ 1003.210-3 Limitation.

Determinations and findings will set forth the particular reasons why competition by formal advertising is impracticable, and will be approved as provided in § 1003.306(b). Following is approved format for determinations and findings under 10 U.S.C. 2304(a)(10) (§ 3.210 of this title):

DEPARTMENT OF THE AIR FORCE

DETERMINATIONS AND FINDINGS

Authority To Negotiate Contract

1. The Department of the Air Force proposes to purchase -----

No. 68—3

2. I hereby find that the use of formal advertising would be impracticable for the following reasons: (Set forth the peculiar facts and circumstances which will justify clearly the specific determination made. These circumstances must conform to the subparagraph number inserted below.)

3. I hereby determine that this procurement is for supplies for which it is impracticable to secure competition by means of formal advertising, and that the negotiation of a contract for these supplies is authorized pursuant to 10 U.S.C. 2304(a)(10) as contemplated by paragraph 3-210.2()¹ of the Armed Services Procurement Regulation.

(S) -----
(Contracting officer)

PR -----

Approved: -----
(Name and title)

¹ Insert the appropriate subparagraph number.

7. Add §§ 1003.211-50, 1003.212 and 1003.212-50 as follows:

§ 1003.211-50 Sample format and justification.

(a) Following are sample formats acceptable for determinations and findings under 10 U.S.C. 2304(a)(11). The first format is for individual determinations and findings. The second format is for class determinations and findings.

DEPARTMENT OF THE AIR FORCE

INDIVIDUAL DETERMINATIONS AND FINDINGS

Authority To Negotiate Contract

I hereby find that this procurement is -----¹ (set forth description of work to be accomplished and enough specific facts and circumstances in the interest of national defense.

I further determine that the use of formal advertising would be impractical because (set forth specific reasons). It is to be understood, however, that this determination and findings will not be used to avoid procurement by formal advertising for items which can be procured by that method without impairing the program.

Upon the basis of the determinations and findings above, I hereby authorize the negotiation of contracts for this procurement pursuant to 10 U.S.C. 2304(a)(11). This class determination shall remain in effect until June 30, ----²

¹ Use the word or words "experimental," "developmental," "research," "or furnishing of property for development and test," which properly describe the work to be done.

² Each class determination and findings will specify an effective period which will normally not exceed one year.

(b) Determinations and findings for research and development will be identified within two categories: (i) Those for basic or applied research and advanced technology, and (ii) those for research and development programs leading to future operational systems of AF inventory equipment. The information in subparagraph (1) of this paragraph will be set forth in narrative form in letter of transmittal requesting determinations and findings under 10 U.S.C. 2304(a)(11) for both Category A and B programs.

(1) General: (i) Complete description of proposed effort in terms readily understandable by a layman. This will include an explanation of whether proposed procurement is for research, development, or experimental work, the

manufacture or furnishing of supplies for experimentation, development, research, or test, or for a combination of two or more of the foregoing. Further, if the proposed procurement covers manufacturing methods, in whole or in part, specific mention will be made of this fact. In addition, statements responsive to the following questions will be required:

(a) Is this an isolated task or part of a whole balanced program?

(b) What is the end result of this effort—does it have a specific use, or is its purpose to acquire general knowledge?

(c) How will the results of this task be applied?

(d) Does the current level of technology support the feasibility of this further effort?

(e) To what degree has this proposed effort been coordinated with other interested AF activities—with other agencies?

(ii) When supplies are to be procured for the purpose of service testing, the need for the specific quantities involved must be clearly explained and justified.

(iii) Estimated dollar amount of procurement.

(iv) Citation of funds to be obligated, and program structure project and task number, as applicable.

(v) Set forth the desired contract placement date and type of contract contemplated.

(2) Additional information required for Category A Programs.

(i) Reasons for negotiation must be explained and substantiated.

(ii) Set forth the source to be awarded the procurement, if known, or the potential sources to whom the procurement may be awarded.

(iii) If sole source, state reason why other sources cannot be considered.

(iv) If initial sole source, state whether based on solicited or unsolicited proposal.

(v) If initial sole source and the information is readily attainable, state who financed the effort which put the proposed contractor in sole source position.

(vi) If follow-on procurement is with the same source:

(a) Are there other sources with comparable experience and facilities?

(b) What would be the extent and impact, including loss of time, or duplicating this source's experience and facilities?

(3) Additional information required for Category B Programs.

(i) Reasons for negotiation must be explained and substantiated.

(ii) Set forth the source to be awarded the procurement, if known, or the potential sources to whom the procurement may be awarded.

(iii) If sole source, state the reasons why other sources cannot be considered.

(iv) What plans are being made to:

(a) Advertise or compete the end item in the future?

(b) What are the target dates for above?

(v) If initial sole source:

(a) Was it based on solicited or unsolicited proposals?

(b) Who financed the effort which put proposed contractor in sole source position? (Contractor or Government.)

(vi) If follow-on procurement with same source:

(a) Are there other sources with comparable experience and facilities?

(b) What would be the extent and impact, including loss of time, of duplicating this source's experience and facilities?

(c) Do we intend to obtain rights to all the data needed for effective procurement of the end item?

(d) Do we or will we have title to any useful special tooling developed?

(e) Are there any other reasons why it is necessary to continue with incumbent?

§ 1003.212 Classified purchases.

§ 1003.212-50 Format and justification.

(a) Following is approved format for determinations and findings under 10 U.S.C. 2304(a) (12) (§ 3.212 of this title):

DEPARTMENT OF THE AIR FORCE

INDIVIDUAL DETERMINATIONS AND FINDINGS

Authority To Negotiate Contract

The Department of the Air Force proposes to purchase -----

I hereby find that this procurement is for property and services which, because of military considerations, have a security classification of (Secret) (Confidential) (Top Secret) or (the purchase should not be publicly disclosed because of the character of the procurement).

I further find that the use of formal advertising would be impracticable (set forth specific reasons).

I hereby determine that the ingredients and components (character) of this property and services are (is) such that the contract (purchases) should not be publicly disclosed.

Upon the basis of the determinations and findings above, I hereby authorize the negotiation of a contract for this procurement pursuant to 10 U.S.C. 2304(a) (12).

(b) The following information will be shown in the letter of transmittal requesting determinations and findings under section 10 U.S.C. 2304(a) (12):

(1) Description of the supplies or services being purchased.

(2) Grade of classification and authority, e.g., Confidential as per JANAP 140(b).

(3) Statement of how advertising and competitive bidding would reveal security information, such as disclosure of: specifications, classified source, classified fact that the Air Force is engaged in a project of a particular nature, etc.

(4) Statement that none of ASPR authorities listed in § 3.212-3 of this title could be used as authority for negotiating the procurement.

(5) Statement that except for security classification the procurement would have been affected by formal advertising or by negotiation pursuant to section 10 U.S.C. 2304(a) (), whichever of these two methods of procurement is applicable.

8. Section 1003.213-3 is revised and §§ 1003.213-4 and 1003.213-50 are added as follows:

§ 1003.213-3 Limitation.

Procurement action will not be initiated for an item or group of related items, the standardization of which has not been previously approved until the actual receipt by the procuring activity of a Secretarial determination that authorizes such standardization.

§ 1003.213-4 Record and reports.

The Directorate of Procurement Management, DCS/S&L (AFSPM-CP), Hq USAF, will maintain on a current basis a master list of items for which determination and findings have been made under this authority.

§ 1003.213-50 Format and justification.

(a) The examples for determinations and findings that are in §§ 1003.210 through 1003.215 may be used as a guide in the preparation of determinations and findings under § 3.213 of this title. In preparing determinations and findings, the circumstances of the individual case will dictate the content as well as the justification to be included in the letter of transmittal. Each request for determination will include the following information:

(1) A detailed statement as to the interdepartmental coordination effected. (See § 3.213-2(c) of this title.)

(2) The method used in selecting the proposed supplier(s) at the time of the initial procurement including the extent of competition. (See § 3.213-3 of this title.)

(3) The safeguards established to insure fair pricing after approval to standardize is received.

(b) Application:

(1) Except as noted in subparagraph (6) of this paragraph requests for procurement standardization action may be initiated by an individual organization, through appropriate channels, to the Directorate of Supply and Services, Hq USAF (AFSSS-MP-1).

(2) The Directorate of Supply and Services will forward the request to the office of primary interest for recommendations on disposition and priority rating to be placed on the item of equipment involved. Recommendations of standardization action with appropriate rating will then be forwarded by the Director of Supply and Services to AFLC (MCSI).

(3) In arriving at its decision, Hq USAF will apply the criteria and requirements of § 3.213-2 of this title. If it is decided that standardization is warranted, AFLC will forward its recommendations, supported by substantiating data, in quadruplicate, to Hq USAF (AFSSS-MP-1) for coordination with the office of primary interest and subsequent submission to the Secretary of the Air Force or his designated representative for findings and determinations.

(4) To facilitate processing, each request will be limited to a single item of supply or group of related items.

(5) In transmitting AF initiated Military Interdepartmental Purchasing Requisitions (MIPRs) requiring procurement of specific technical commercial-type items of equipment for reasons of

standardization, the initiating activity will attach a copy of the approved determination to standardize, signed by the Assistant Secretary of the Air Force (Materiel).

(6) Request for approval to standardize fixed-type equipment under Military Construction Programs will be transmitted by the Air Force Regional Civil Engineer (AFRCE) or major air command to the Director of Civil Engineering, Hq USAF, for necessary Air Staff action and secretarial approval.

9. New §§ 1003.214, 1003.214-50, 1003-215-51, 1003.216 and 1003.216-50 are added as follows:

§ 1003.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

§ 1003.214-50 Format and justification.

(a) Following is approved format for determinations and findings under 10 U.S.C. 2304(a) (14) (§ 3.214 of this title):

DEPARTMENT OF THE AIR FORCE

INDIVIDUAL DETERMINATIONS AND FINDINGS

Authority To Negotiate Contract

1. This procurement will consist of ----- (describe the items being procured). Supporting items or services will be adequately defined so that, when read in context with the supporting documentation, there is no ambiguity about the scope of authority to negotiate. For example, "certain spare parts," "engineering services required for installation and testing," or "that aerospace ground equipment which is both initial and peculiar" are considered adequate descriptions for purposes of this paragraph 1.

2. Authority To Negotiate for Spare Parts (exclude when not applicable).

(a) (Not applicable to the Ballistic and Space Systems Divisions.) The authority herein granted to negotiate for spare parts is limited to those spare parts which are not identical to parts previously procured by the Air Force and which are determined, not later than 90 days prior to the scheduled acceptance of the last article under the contract, to be necessary to support the end items being procured under authority of this determinations and findings.

(b) (Applicable to the Ballistic and Space Systems Divisions until such time as the single program policy and related provisions are implemented.) The authority herein granted to negotiate for spare parts is limited to the purchase of initial spare parts and will not be construed to allow deviation from applicable regulations governing the determination of suitability of individual items of replenishment spare parts for procurement through competition preferably by formal advertising.

3. In this paragraph, establish that the property to be procured is of a technical or specialized nature. Set forth the peculiar facts and circumstances which will clearly justify the determination that the supplies are of a technical or specialized nature requiring (either or both): a substantial investment or an extended period of preparation for manufacture.

(a) If it is to be determined that substantial investment is required, set forth an estimate of the dollars specifically expended in preparing for production of the items involved. Further, state the estimated value of the investment which would be duplicated should a source other than the one which has already produced the item be awarded the contract. This determination should not be used to avoid duplication of private

investment unless this duplication would be likely to result in additional cost to the Government.

(b) If it is to be determined that an extended period of preparation for manufacture is required, include such facts as (i) the time already spent by the present supplier in acquiring the techniques, know-how, and experience necessary for producing the item, and (ii) the period of preparation time which would have to be duplicated by a source not having the background experience in the item and the impact thereof on the required delivery schedule.

4. Include a statement substantially as follows: Based on the findings above made, I hereby determine that the proposed procurement is for technical and special property requiring (a substantial initial investment) (an extended period of preparation for manufacture),¹ and that formal advertising (would be likely to result in additional cost to the Government by reason of duplication of investment) (may require duplication of preparations already made which would unduly delay procurement).¹

5. Upon the basis of the determinations and findings above, I hereby authorize the negotiation of a contract for this procurement pursuant to 10 U.S.C. 2304(a) (14).

¹Insert one or both of the phrases in parentheses, as appropriate.

(b) Two distinct but interrelated categories of information will be set forth in narrative form in the letter of transmittal requesting determinations and findings under 10 U.S.C. 2304(a) (14). The first category will contain facts conclusively demonstrating compliance with the legal requirements for negotiation. The second category will cover the general history of previous procurements of the items as known to the buyer without detailed research and the current procurement plan for the item including actions taken or planned to develop a competitive posture.

(1) Category 1—Legal Sufficiency—will contain the following data:

(i) Adequate description both in laymen's terms and by specific nomenclature of principal and supporting items or services to be procured under authority of proposed determinations and findings.

(ii) An explanation of why the basic item being procured constitutes technical and special property.

(iii) The estimated price or cost of the quantities which may be procured under the reasonably firm procurement program as defined in § 1003.306(d).

(iv) Where duplication of a substantial initial investment is relied upon as the basis for satisfying the legal requirement, the analysis of the duplication in investment will cover the following:

(a) The elements of cost included in computation of Government's and contractor's original investment, e.g., research, development, facilities, and special tools.

(b) How the quantum of the Government's and contractor's investment which would be duplicated was determined.

(v) Where duplication of an extended period for preparation for manufacture is relied upon as a basis or the basis for satisfying the legal requirement, it must be clearly demonstrated that the undue delay created by the use of formal advertising would be prejudicial to the AF mission. Where corrective action for

the future is indicated such will be discussed under category 2 (subparagraph (2) of this paragraph). In addition, the analysis for use of this reason will include the following:

(a) Description of major categories of work (e.g., development of a prototype, tooling-up for production, training of personnel) considered to constitute preparation for production.

(b) What elements of preparation would have to be duplicated by other qualified but inexperienced producers.

(c) How the total preparation time which would be duplicated at this time was generally estimated.

(2) Category 2—History of Previous Procurements for End Items and Current and Future Procurement Plans—will contain the following data, as illustrated in subdivision (v) of this subparagraph, to the extent readily available without detailed research:

(i) How present producer was initially selected.

(ii) Efforts to establish competitive sources and what impediments must be overcome to develop a competitive posture. (For example: There are many cases where future requirements for an item which is the subject of the request for determinations and findings can be procured competitively if it were possible to live with the procurement lead time of inexperienced but qualified producers. Generally, in this situation funding limitation is the impediment to be overcome.)

(iii) Considerations given to splitting the current procurement into quantities immediately required and those which can be delayed in order to obtain competition.

(iv) Type of contract contemplated.

(v) Digest examples:

(a) The X Corporation is presently developing the equipment under a competitively awarded contract which calls for a prototype, 19 production units, and engineering data adequate for competitive procurement. The prototype is scheduled for final acceptance, testing, and evaluation in October 1961 and the procurement data to be delivered in the future will be based on the prototype as finally approved and accepted. It is not possible to defer this procurement until said data is available for competitive procurement because of the critical delivery requirements.

(b) The quantities to be negotiated with the X Corporation at an estimated price of \$473,610 are the minimum required to meet critical installations and represent only a portion of the current AF requirements. Additional requirements in the estimated amount of \$426,645 will be procured competitively. This will be the third production contract for the equipment. The initial contract was awarded to the Y Corporation pursuant to two-step advertising procedures but Y has not yet been able to meet the required reliability requirements. Accordingly, X was asked to conduct the development on a product improvement contract and X was awarded the second production contract.

(c) The X Corporation developed the equipment for the Air Force in 1949 and furnished all equipments to satisfy

AF requirements through 1957. There were no procurements during 1958 and 1959. In early 1959, responsibility for procurement of the equipment was transferred to the Z Air Materiel Area. This is the second production contract for the equipment to be issued by Z; the first was dated June 30, 1961. By letter dated June 2, 1961, Commander of Z directed his in-service engineering office to develop a specification and procurement package suitable for competitive procurement. The development of said procurement package is underway and it is expected that it will entail one year of effort to complete. It is planned to complete future equipment requirements, possibly as soon as July 1, 1962.

(d) The equipment will be procured according to MIL-D-1489 (USAF). This specification is considered adequate for formal advertising; however, it is not possible to place this procurement by formal advertising because it is essential that the required delivery schedule be satisfied. An inexperienced producer could not possibly comply with the schedule because he would, of necessity, have to duplicate preparation already made as set forth under category 1 (subparagraph (1) of this paragraph). To obtain the necessary lead time for future competitive procurement of this equipment, action will be taken to include this item in the December 1961 request for Pre-Buy release of the FY 63 program requirements. Also, the appropriate AMA has been requested to initiate their FY 62 requirements at the earliest practical date and to forward advance copies of "planning" purchase requests as soon as possible.

(c) Note that there are alternative combinations of circumstances which permit negotiation under 10 U.S.C. 2304(a) (14). All elements pertinent to such combinations, which are cited in the determinations and findings, must be substantiated in the accompanying request, otherwise they will not be included in the determinations and findings. In addition, where there has been substantial initial investment or extended period of preparation in the case of more than one supplier the above information will be furnished for each supplier. The authority provided by this section is intended primarily to apply where there is only one such supplier. It will generally not be available where there are more than three suppliers.

§ 1003.215-51 Format.

Following is approved format for determinations and findings under 10 U.S.C. 2304(a) (15):

DEPARTMENT OF THE AIR FORCE

INDIVIDUAL DETERMINATIONS AND FINDINGS

Authority To Negotiate Contract

1. This procurement is for the modification of 8 B-36 Docks for KC-135 Aircraft.

2. I hereby find that the proposed procurement was solicited by advertising under Invitation for Bid 17-600-58-3, dated August 1, 1957. The only bid received offered a lump sum price of \$268,660 for basic bid and \$244,660 for alternate bid, which were considerably higher than the estimated project price. This difference is considered excess-

sive as it exceeds the highest project estimated price by over \$100,000.

3. The use of formal advertising is impracticable because _____

4. Based on the findings above made, I hereby determine that the lowest rejected bid prices of a reasonable bidder obtained through advertising were \$268,660 for basic bid and \$244,660 for alternate bid and that such prices for this modification are not reasonable.

5. Upon the basis of the determinations and findings above, I hereby authorize the negotiation of a contract for this procurement pursuant to 10 U.S.C. 2304(a)(15), provided that prior notice of intention to negotiate, and a reasonable opportunity to negotiate, be given to each responsible bidder who submitted a bid in response to the invitation for bids, the negotiated prices be lower than the lowest rejected bids of a responsible bidder, as determined above, and the negotiated prices be the lowest negotiated prices offered by a responsible contractor.

§ 1003.216 Purchases in the interest of national defense or industrial mobilization.

§ 1003.216-50 Format.

There is no approved format for determinations and findings or of letters of transmittal, but those set forth under the other exceptions may be used as a guide. In preparing determinations and findings, the circumstances of the individual case will dictate the determinations and findings as well as the justification to be included in the letter of transmittal. The letter of transmittal will show the estimated cost of the proposed procurement.

10. In § 1003.217-2, revise paragraph (a) as follows:

§ 1003.217-2 Application.

(a) Except as indicated in paragraphs (b) through (d) of this section, contracts will be negotiated under this authority only upon approval of the Secretary. Requests for approval will contain a statement of pertinent facts and reasons therefor, and will be transmitted according to § 1003.306.

Subpart C—Determinations and Findings

1. Revise §§ 1003.301 and 1003.303 as follows:

§ 1003.301 Nature of determinations and findings.

(a) Nature of determinations and findings: Determinations and findings, referred to throughout Part 3 of this title, may be made with respect to classes of purchases or contracts only by the Secretary. The policy of the Department of the Air Force is to make class determinations only under very exceptional circumstances and for a period normally not to exceed one year. In requesting class determinations and findings, the supporting information with respect to each item of the class will be as detailed as the supporting information required for an individual determinations and findings under the particular section of the Act involved. In addition, the principal items of CFE, as defined and within the purview of AFR 70-9 (Airborne Weapon System

and Support System Procurement) to be developed by or incorporated in the production end item by the contractor(s) will be itemized and explained. When the determinations and findings covers a weapon or support system, the major subsystems only will be itemized. When it covers a major subsystem, the major CFE equipments and components only will be itemized. CFE items which are not within the scope of the approved determinations and findings will be listed in the letter forwarding the signed determinations and findings.

(b) Determinations and findings signed by the Secretary of the Air Force do not in any instance constitute program or project approval. Authority to negotiate is limited, except for those procurements specifically exempt from provisions of DOD Directive 7200.4, to that portion of the procurement or program which is currently authorized at the time of negotiation or within 6 months of the issuance of the determinations and findings, whichever is later. To the extent required by § 1003.306(e), subsequent negotiations which result in increasing the scope of the contract will be covered by additional determinations and findings.

§ 1003.303 Determinations and findings by the head of a procuring activity.

The Commander, AFSC, and the Commander, AFLC, have redelegated their authority to make determinations and findings supporting the use of a cost or a cost-plus-a-fixed-fee contract or an incentive type contract as set forth in this section.

(a) AFSC: The Commander, AFSC, has redelegated his authority to the Deputy Chief of Staff, Procurement and Materiel, and the Director and Deputy Directors of Procurement, Hq AFSC. The Director of Procurement, Hq AFSC, has further redelegated this authority, with power of redelegation, to:

(1) Commanders of AFSC divisions and centers.

(2) Commander, OAR.

(b) AFLC: The Commander, AFLC, has redelegated his authority to the Director of Procurement and Production, Hq AFLC, with power of redelegation, who in turn has redelegated the authority to the following officials:

(1) Deputy Directors of the Directorate of Procurement and Production, Hq AFLC.

(2) Commanders of AFLC field procurement activities with power of redelegation not below the level of a deputy director of procurement and production or comparable level. Commanders and Deputy Commanders, MAAMA and SMAMA, may redelegate authority to the Commander and Deputy Commander of APRE and APRFE respectively.

(3) Commander, Military Air Transport Service, with respect to cost and CPFF type contracts for services involving CRAF Senior Lodger and Working Group contracts only. Redelegation may not be made below the level of the Chief, Procurement Division, Hq MATS.

(4) Delegation to the Air Training Command with respect to making deter-

minations and findings supporting the use of a cost or cost-plus-a-fixed-fee type contract is in Subpart D, Part 1001 of this subchapter.

(c) The delegations set forth in paragraphs (a) and (b) of this section are subject to the following limitations:

(1) No person will exercise the authority redelegated if he is himself the contracting officer in the procurement involved.

(2) The officials to whom authority is redelegated will exercise such authority only within the jurisdictional limits of their respective duty assignments.

§ 1003.304 [Deletion]

2. Delete § 1003.304.

3. Revise § 1003.306 as follows:

§ 1003.306 Procedure with respect to determinations and findings.

(a) * * *

(b) Approval of determinations and findings under §§ 3.202 and 3.210 of this title and §§ 1003.202 and 1003.210; negotiated contracts. Determinations and findings under §§ 3.202 and 3.210 of this title require contracting officer's signatures and will be subject to the following written approvals:

(1) Hq AFSC, AFSC centers and divisions, and AFLC field procurement activities:

(i) Chief or Deputy Chief of Buying Divisions—procurements initially estimated to be in excess of \$10,000 but not in excess of \$50,000.

(ii) Director or deputy director of procurement—procurements initially estimated to be in excess of \$50,000.

(2) Purchasing activities other than those stated in subparagraph (1) of this paragraph: Chief or deputy chief of the purchasing office—procurements initially estimated to be in excess of \$10,000.

(c) Limitation. No person will exercise the authority redelegated in paragraph (b) of this section if he is the contracting officer in the procurement involved. This limitation does not apply to SPOs at ASD (or comparable organizations) where the chief of the SPO is the only contracting officer appointed for such SPO. In these instances, the determination and finding will indicate that the person executing the determination and finding is both the contracting officer and the chief of the SPO and no further approval of such determination and findings will be required.

* * *

(e) * * *

(3) If a change in requirements exceeds the limitations authorized in this paragraph, the procurement will not be consummated until a new determinations and findings covering the increase has been obtained according to prescribed procedures.

(f) * * *

Subpart F—Small Purchases

Revise § 1003.652-3(a)(4) as follows:

§ 1003.652-3 Purchasing procedures.

(a) * * *

(4) * * *

(iii) * * *

(a) Obtain from the maintenance activity a signed statement as to the reparability of the item in light of prices quoted and reasonableness of prices quoted for repairs contemplated whenever the contracting officer has reason to believe the price is not fair and reasonable, and/or when the vendor's price quotation exceeds the amount authorized for repair of the item. If it is determined that the price is unreasonable, other qualified sources may be contacted for prices by using the itemized labor and parts list furnished by the first source as a guide in determining parts and man-hours required for repair.

(b) If the item is not reparable or award is to be made to another vendor, notify the first vendor accordingly and accomplish the purchase action for services performed in either subdivision (i) (a) or (b) of this subparagraph, as appropriate, by one of the other small purchase procedures authorized by this subpart.

Subpart H—Price Negotiation Policies and Techniques

1. Revise §§ 1003.801-2 (a) and (b) (2); 1003.802-2, 1003.804-2 and 1003.807-4 (b) (1) and (2), as follows:

§ 1003.801-2 Responsibility of contracting officers.

(a) No implementation.

(b) (1) * * *

(2) All requests for assistance will be specific as to the extent and kind of analysis required and will include all pertinent information. AFPI Form 4, "Request for Price Analysis," may be used in submitting requests. In the most demanding, complex procurement situations, the contracting officer may request the price analyst to lead in negotiation of price and pricing terms.

§ 1003.802-2 Selection of prospective sources.

See § 3.101 and Subparts G and H, Part 1 of this title and § 1003.101 and Subparts G and H, Part 1001 of this subchapter.

§ 1003.804-2 Late proposals.

(a) No implementation.

(b) (1) Research and development procurements are exempt from the procedure in this section and § 3.804-2(b) (2) of this title. On other procurements, the contracting officer will send recommendation to the appropriate officer for written decision: (i) Director or deputy director of procurement and production at AFLC air materiel areas, or 2709th AF Vehicle Control Group; (ii) commander, or a duly authorized representative not below the staff officer responsible for procurement, of AFSC divisions or centers; (iii) commander of the major air command (including Office of Aerospace Research) concerned or a duly authorized representative not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command

immediately subordinate to the major air command.

§ 1003.807-4 Cost analysis.

(a) * * *

(b) (1) and (2) No implementation.

* * *

2. Add new § 1003.802-3 as follows:

§ 1003.802-3 Requests for proposals.

Requests for proposals issued to several prospective sources normally will not require the initial submission of a price breakdown, together with supporting cost and pricing information. Instead, the request should state only that detailed cost and pricing information subsequently may be requested by the contracting officer from potential sources if, upon receipt of proposals, the contracting officer determines that the procurement situation requires the submission of such information. Exceptions are appropriate in those multiple source solicitations where prior to receipt of proposals, the contracting officer is able to determine that a cost analysis approach to pricing is desirable, such as where:

(a) The treatment of nonrecurring costs is expected to have a significant bearing on pricing and the negotiation of follow-on procurements (see § 3.807-4 (a) (2) and 3.813 of this title).

(b) Cost analysis in connection with initial negotiations is expected to facilitate related pricing actions (see § 3.807-4 (a) (3) of this title).

(c) A valid basis for total price comparisons among responsive sources has not been established (see § 3.807-4 (a) (4) of this title).

(d) The nature of the procurement precludes the award of a firm fixed-price contract (see § 3.807-4 (a) (9) of this title).

3. In § 1003.807-5, revise paragraph (a) to read as follows:

§ 1003.807-5 Subcontracting.

(a) Major subcontracts pose three interrelated problems: (1) Need to give prime contractor a positive incentive to make first award a sound one in terms of product and price; (2) need to encourage close pricing in sole source or limited competitive situations in follow-on buys; and (3) need to price prime contract at a level consistent with sound subcontract prices. Successful resolution of the third problem is vital to solution of the first two. One way this may be achieved is to negotiate initial prices with prime contractor before he has established firm prices with his major suppliers. To do this properly, ACO will need to give PCO the information contemplated by Subchapter A, Chapter I of this title. ACO will use pricing and technical specialists to review prices proposed for major subcontracts. Where appropriate, he also will use audit services provided by either the prime contractor's own auditors or by military audit agencies, depending upon circumstances. See § 1003.903-55. To protect the interests of a subcontractor, the contracting officer will use judgment in releasing to prime contractors information

received from Department of Defense sources.

4. Revise § 1003.808-2 as follows:

§ 1003.808-2 Factors for determining fee or profit.

* * *

(a)-(1) No implementation.

(j) See § 1013.351(c) of this title for profit or fee consideration regarding costs of general purpose items purchased as components or assembly in special test equipment or other special equipment.

5. Revise § 1003.811(d) to read as follows:

§ 1003.811 Record of price negotiation.

* * *

(d) The procuring activity will insure that a copy of the price negotiation memorandum is attached to the ACO's copy of the resulting contract or amendment thereto. Copies of price negotiation memoranda distributed to field contract management activities pursuant to this requirement will be stamped "For Official Use Only (AFR 11-30)." In no event should specifics, such as labor or overhead rates included in the AF negotiation objective, be construed by contract management activities as being automatically approved for use in other negotiations with the contractor involved.

§§ 1003.850-8; 1003.850-9 [Deletion; redesignation]

6. Delete § 1003.850-8 and redesignate present § 1003.850-9 as § 1003.850-8.

Subpart I—Subcontracting Policies and Procedures

1. Add §§ 1003.902 and 1003.902-1 as follows:

§ 1003.902 "Make-or-Buy" programs.

§ 1003.902-1 General.

(a)-(i) No implementation.

(j) Upon receipt of changes or additions to the "Make-or-Buy" program the ACO will evaluate the contractor's proposal and forward it, with his recommendations, to the appropriate PCO. The PCO will make the necessary determinations and will document the contract file accordingly. Any written comments to changes or additions to the "Make-or-Buy" program issued by the PCO to the contractor will be transmitted through the ACO.

§ 1003.903 [Amendment]

2. Delete the text from § 1003.903.

3. Revise § 1003.903-1 and in § 1003.903-3 revise paragraph (a) and delete paragraph (f), as follows:

§ 1003.903-1 Contract clauses.

(a)-(b) No implementation.

(c) In determining the figure to be inserted in paragraph (b) (ii) and (iii) of the clause in § 3.903-1(a) of this title the contracting officer will apply the factors in § 3.903-1(c) of this title. Insert the \$100,000 only where it has been determined that no one of the factors requires a lower dollar figure. When a lower dollar figure is determined to be necessary, insert \$25,000.

§ 1003.903-3 Approval of purchasing system.

(a) * * *

(1)-(3) No implementation.

(4) See Subparts G and H, Part 1 of this title and Subparts G and H, Part 1001 of this subchapter regarding DOD and AF policy respecting subcontracting with small business and labor surplus concerns. The PMA in his continual surveillance of the contractor's purchasing system will secure technical guidance and information from the cognizant AF small business specialist when making the appraisal as to the effectiveness of the contractor's practices. The purchase methods analysts will advise the cognizant AF small business specialist when a "Purchase System Review" or "Annual Surveillance Report" is to be made and request the AF small business specialist, during the time of the review to examine in the contractor's plant the practices of the contractor in the Small Business and Labor Surplus Area Program (see paragraph (d) of this section). The findings and conclusions of the AF small business specialist will be incorporated in the report. The Contract Management Region Purchase Methods Evaluation Panel, during their evaluation of purchasing systems according to paragraph (d) of this section, will determine whether the contractor's purchasing system conforms to the requirements of §§ 1.707 and 1.805 of this title and §§ 1001.707 and 1001.805 of this subchapter. A contractor's purchasing system that does not conform will not be approved.

(5) * * *

(6) and (7) [Delete]

* * * * *

4. Revise § 1003.903-55 to read as follows:

§ 1003.903-55 Use of audit personnel.

(a) Where the contracting officer's consent to subcontracts is required (see § 3.903 of this title and § 1003.903), it is required that the contractor furnish complete justification of subcontracts awards, giving adequate information with respect to price and/or cost analysis accomplished; and the currency, completeness, and correctness of cost and/or pricing data obtained from the subcontractors. In general, the policies in § 3.809 of this title and § 1003.809, relating to the use of audit services (contractor or Government) as a pricing aid, also apply to subcontract price and/or cost analysis. The use of audit services (contractor or Government) in connection with price analysis does not necessarily imply a cost audit. The responsibility to decide whether to request government audit service rests with the contractor; however, the authority to decide whether to provide government audit information to the contractor rests with the contracting officer. In line with this, the audit request should specify in detailed terms the areas of the subcontractor's proposals upon which audit efforts are desired. Also the end uses of the data gathered by audit should be stated in the request. There should be no misunderstanding on the part of

the auditor as to the information required. However, this requirement does not necessarily impose any limitation on the auditor as to the overall scope of the audit. A contractor's communication in connection with audit requests will be with his cognizant ACO (or secondary ACO if established). The ACO will be responsible for receiving and transmitting the audit requirement into military audit channels unless the audit is to be performed by a contractor auditor.

(b) It is the responsibility of the contractor to use his own audit staff in connection with subcontract pricing or he may make use of audit information which is available to the ACO. In particular situations, as exemplified in this paragraph, utilization of audit reports supplied by government auditors is desirable and is encouraged to the fullest practicable extent when:

(1) The subcontractor objects to the audit of its records by the prime contractor.

(2) A military department has audit cognizance or is currently auditing other subcontracts or prime contracts at the subcontractor's plant.

(3) The subcontractor holds prime or subcontracts from two or more military departments or prime contractors and it would be more economical and provide consistent audit treatment and orderly audit administration.

(4) The prime contractor has a substantial or controlling financial interest in the subcontractor.

(5) The prime contractor has subcontracted, or plans to subcontract a substantial portion of his contract to one or to a very limited number of subcontractors. In these situations contractor utilization of government audit reports is to the mutual interest of the contractor and the Government. It may be the most or only practicable method of obtaining essential information and will ordinarily insure consistent treatment of subcontractor's costs, reduce duplicate auditing, and eliminate or reduce costs which the contractors would otherwise incur in the performance of subcontract audits.

(c) Where the prime contractor is performing the audit of a subcontractor's records, the audit program and cost principles used and the working papers and audit report should be made available to the government auditor having audit responsibility for the prime contractor. If the government auditor considers the contractor's audit program or audit report lacking in any respect, he will immediately notify the contracting officer of the deficiencies so that questionable areas may be resolved. Where a subcontract contains a price redetermination or incentive-type clause, and where the Auditor General (or any other Department of Defense audit agency) has performed a previous audit of the subcontractor's records, the prime contractor's or upper tier subcontractor's auditors may, where appropriate, consult with such government audit personnel as to the adequacy of the subcontractor's accounting system, if such an appraisal has been previously accomplished, or on any other factual data available which

may be released without compromising proprietary or security information.

A new Subpart T is added as follows:

Subpart T—Repricing of Fixed-Price Contracts Providing for Price Determination or Incentive Revision of Price, and Reporting of Cost and Price Data

Sec.	
1003.2000	Scope of subpart.
1003.2001	Responsibility for repricing.
1003.2002	Requests for audit assistance in repricing.
1003.2003	Preparation for repricing negotiations.
1003.2004	Conduct of negotiations.
1003.2005	Special instructions for repricing open contracts.
1003.2006	Repricing of terminated contracts.

AUTHORITY: §§ 1003.2000 to 1003.2006 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 1003.2000 Scope of subpart.

This subpart establishes procedures for (a) Repricing redeterminable and incentive fixed-price type contracts and (b) the preparation of specified reports.

§ 1003.2001 Responsibility for repricing.

It is AF policy that responsibility for repricing all fixed-price contracts providing for price redetermination or incentive price revision rests with the procuring activity that awarded the basic contract. Delegation of this responsibility to the ACO is authorized only in the case of open contracts where initial pricing also was the responsibility of the ACO (see § 1003.2005).

§ 1003.2002 Requests for audit assistance in repricing.

(a) See § 1003.850-3(a), Step 2. Requests for audit assistance in repricing redeterminable or incentive fixed-price contract types are mandatory if the contract ceiling price equals or exceeds \$350,000. If the ceiling price, as initially negotiated, equals or exceeds this amount, the buyer's request for assistance will be considered automatic by the military department audit organization and no written request is necessary. If the ceiling price reaches or exceeds this amount during performance, as a result of such actions as the incorporation of changes or the initial pricing of support items procured according to applicable provisioning documents, the buyer promptly will forward a request for audit assistance to the cognizant ACO, with an information copy to the Auditor General representative at the procuring activity.

(b) Requests for audit assistance also are mandatory if no ceiling price applies, as in certain contracts providing for prospective redetermination only, but the amount subject to redetermination is estimated to equal or exceed \$350,000. As soon as possible after award, and in no event later than 90 days prior to the effective point of redetermination, the buyer will forward a request for audit assistance to the cognizant ACO, with an information copy to the Auditor General representative at the procuring activity.

(c) In situations other than those described in preceding paragraphs (a) and (b) of this section, requests for audit assistance in repricing redeterminable or incentive fixed-price contract types are optional. In determining the desirability of requesting such assistance, the buyer should consider such factors as special or unusual problems encountered in initial negotiations, and the likelihood of substantial follow-on procurements for the same or similar supplies. Where assistance is desired, requests should be forwarded as outlined in preceding paragraph (b) of this section.

§ 1003.2003 Preparation for repricing negotiations.

(a) At least 90 days prior to the effective point of price redetermination or revision, the ACO will notify the contractor of his contractual obligations, including timely submission of a proposal and supporting cost data. Copies of this notification will be furnished to the buyer and the auditor. Thereafter, the ACO will follow up periodically to insure timely submission by the contractor.

(b) The contractor will submit at least six copies of his proposal to the ACO. Upon receipt, the ACO will forward one copy to the cognizant auditor, whether or not audit assistance has been requested, and three copies directly to the buyer.

(c) The ACO will review the proposal and forward comments and recommendations to the buyer with a copy to the cognizant auditor. However, if audit assistance is required according to § 1003.2002, the designated representative of the CMD Chief/AFPR and the auditor will, prior to receipt of the contractor's proposal, first hold a pre-analysis review (see § 1003.850-3(a), Step 3). Following such a review, and according to agreements reached, the administering activity promptly will advise the buyer of the target date for its submission of the field analysis report, including supporting data.

(d) Where appropriate, buyer will request that a price analyst at the procuring activity review and analyze the proposal. In addition, the buyer will arrange for a prenegotiation conference according to § 1003.850-5(a), and a timely date for the negotiation meeting with the contractor. If the buyer determines that complexity or dollar value of the repricing action makes field personnel participation in negotiations desirable, written requests will be forwarded by the buyer at least seven working days prior to the established negotiation date. Requests for cognizant auditor attendance will be transmitted through the Auditor General representative at the procuring activity.

§ 1003.2004 Conduct of negotiations.

(a) In price redetermination negotiations, the objective of the government pricing team will be to negotiate a fair and reasonable revised price in which due weight is given to all relevant factors, including those considered in initial negotiations. By way of illustration, but not limitation, full consideration will be given to the contractor's general performance, efficiency, economy, and ingenuity dis-

played in meeting contract requirements, including delivery schedules, quality of product, and character and extent of subcontracting. Cost data, including questioned costs and allocability and reasonableness of costs, will be reviewed, as will any changes in market conditions, competitive aspects or original negotiation, competitive prices for the same or similar items, extent of contractor's technical, production and financial risk, and government assistance in the form of facilities equipment, or financing. All factors will be considered to the extent pertinent and no price redetermination negotiation will be based solely on a single factor. Compliance with policy requires that the government pricing team exercise educated judgment in negotiating the redetermined price, and not rely on mechanical acceptance of all allocable costs plus a preconceived profit factor. The pricing team need not negotiate agreements with the contractor as to individual elements of cost.

(b) The foregoing statements have equal application to the negotiation of targets and the formula for establishing the total adjusted price under incentive contracts. In final price revision of fixed-price incentive contracts, the total cost of performing the contract will be negotiated by the parties using the principles and concepts used to negotiate the firm target cost, including consideration of the degree to which the costs incurred in performance were necessary and reasonable. In no event should the pricing team rely on mechanical acceptance of all allocable costs in negotiating the final costs under a fixed-price incentive contract. Once final costs have been negotiated, final profit and price will be determined by contract formula.

(c) After obtaining agreement, the buyer will get written confirmation from the contractor and will be responsible for preparing the record of price negotiation according to § 3.811 of this title and § 1003.811 of this subchapter (price analyst's report of negotiations will fulfill this requirement provided the buyer's concurrence is indicated thereon). According to § 1001.457(b) of this subchapter and all applicable subparts of Part 1053 of this subchapter, the buyer also will be responsible for having the supplemental agreement prepared (including preparation of an ACD if additional funds are required) and for forwarding it for review, manual approval and distribution, except that the coordination of the staff judge advocate is not required if the supplemental agreement accomplishes only repricing action.

§ 1003.2005 Special instructions for repricing open contracts.

Where, according to § 1003.2001, the ACO is responsible for redetermining an open contract (see § 1003.410-50), he will comply with the policies and procedures in §§ 1003.2002 through 1003.2004, modified as follows:

(a) Written requests for audit assistance, prepared according to § 1003.2002, will be sent directly to the cognizant auditor.

(b) The contractor's proposal, ACO comments and recommendations, and

notification of target dates established at any pre-analysis reviews with the cognizant auditor, need not be furnished to the buyer as required under § 1003.2003 (b) and (c), unless specifically requested.

(c) With the assistance of the administering activity analyst where appropriate, the ACO will arrange for and conduct prenegotiation conferences and negotiation meetings according to § 1003.2003 (d) and 1003.2004. Requests for auditor attendance at negotiation meetings, if desired, will be prepared by the ACO and submitted directly to the cognizant auditor. If additional funds are required, the ACO will request the PCO to prepare an ACD.

(d) After obtaining supplemental agreement number from the cognizant procuring activity, the ACO will be responsible for preparation and signing of the supplemental agreement and for forwarding it for review and manual approval to the procurement committee at the procuring activity that awarded the basic contract. Minimum information required for review is a tabulation of 10 percent (by number) of calls issued, not to exceed 10 in number and consisting of those with the largest dollar value showing: (1) Call number, date, and a brief description of supplies called for, (2) required delivery schedule, (3) actual deliveries, (4) negotiated target price, and (5) date of priced exhibit. In addition, a procurement action report, the contractor's redetermination proposal, a copy of the audit report (if any), a report of prenegotiation conference results, two copies of the record of price negotiations, and two signed and one unsigned copies of the supplemental agreement also will be furnished.

(e) Review and manual approval by appropriate approving authority will be accomplished at the procuring activity that awarded the basic contract unless the gross redeterminable amount exceeds the procurement authority delegated to the procuring activity under § 1001.457 (b) of this subchapter. Under these circumstances, the procuring activity, after review by the local procurement committee, will forward the supplemental agreement to the office of the Procurement Committee (AFLC (MCPC) or AFSC (SCMK-3) as appropriate) for final review and manual approval. After manual approval has been obtained, the procuring activity will return the supplemental agreement and file to the ACO.

§ 1003.2006 Repricing of terminated contracts.

(a) Responsibilities and procedures: Termination contracting officer (TCO) assigned to administer a terminated contract which contains a price redetermination or revision clause will:

(1) Immediately find out whether delivery made under contract has reached point of price revision.

(2) Promptly advise buyer or ACO responsible for accomplishing price revision whether any action should be started under price revision clause before final settlement of terminated contract.

(3) If there is a complete termination of contract and responsibility for negotiation of price revision has been as-

signed by CMR to TCO, latter will notify buyer and ACO of assignment. At least 20 days before making determination as to new price, TCO will inform buyer or ACO of planned revised price. Buyer or ACO will, within 10 days, advise TCO of any objections. Final approval for price revision will, however, be vested in TCO. New price will be reflected by appropriate provision in final termination settlement agreement.

(4) In event of partial termination, buyer or ACO will accomplish repricing action deemed advisable, unless repricing relates only to terminated portion of contract, in which case, repricing will be accomplished by TCO. Where more than terminated portion is to be repriced, buyer or ACO may request TCO to reprice terminated portion.

(b) Audit assistance will be requested according to § 8.207 of this title.

Subpart U—Depreciation of Emergency Facilities, is deleted.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

By order of the Secretary of the Air Force.

WILLIAM L. KOCH,
Lt. Colonel, United States Air
Force, Chief, Special Activities
Group, Office of The
Judge Advocate General.

[F.R. Doc. 63-3593; Filed, Apr. 5, 1963;
8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 204—DANGER ZONE REGULATIONS

Gulf of Mexico, Florida

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 204.120 governing the use and navigation of danger zones in the Gulf of Mexico, Florida, is hereby revised redesignating the boundaries of the small arms firing range and changing the firing periods for both ranges, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 204.120 Gulf of Mexico, southeast of St. Andrew Bay East Entrance, Small Arms Firing Range, Tyndall Air Force Base, Fla.

(a) *The danger zones*—(1) *Area No. 1.* The waters of the Gulf of Mexico southeast of St. Andrew Bay East Entrance within a rectangular area one statute mile wide, the longitudinal centerline of which extends from a point on shore at latitude 30°04'30", longitude 85°36'48", 206°, the seaward limit is a line from latitude 30°03'46", longitude 85°37'45" to latitude 30°03'24", longitude 85°36'52".

(2) *Area No. 2.* The waters of the Gulf of Mexico and St. Andrew Sound within an area described as follows, but excluding Crooked Island: Beginning at a point on shore at latitude 30°02'56", longitude 85°34'35"; thence to latitude

30°02'18", longitude 85°36'18"; thence to latitude 30°01'24", longitude 85°35'40"; thence to latitude 30°00'45", longitude 85°34'41"; thence to a point on shore at latitude 30°02'10", longitude 85°33'42"; thence along the shore line to the point of beginning.

(b) *The regulations.* (1) No vessel or other craft shall enter or remain in the areas during periods of firing. Area No. 1 will be used for firing practice from 8:00 a.m. to 5:00 p.m., Monday through Friday, with possibly some sporadic firings on Saturdays and Sundays. Local news media will be used to advise of non-scheduled firings.

(2) Area No. 2 will be operated on a sporadic schedule, with firings likely each day including Saturdays, Sundays, and holidays, between the hours of 6:00 a.m. and 5:00 p.m. A 10' x 18' red flag will be displayed on a pole at the shore line whenever firing is in progress.

(3) The regulations in this section shall be enforced by the Commanding Officer, Tyndall Air Force Base, Florida, and such agencies as he may designate.

[Regs., March 22, 1963, 15702-32 (Gulf of Mexico, Fla.)—ENGW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 63-3594; Filed, Apr. 5, 1963;
8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 14229; FCC 63-300]

PART 3—RADIO BROADCAST SERVICES

Fostering Expanded Use of UHF Television Channels

1. On July 18, 1962, the Commission adopted the First Report and Order in the above entitled matter abandoning the proposal for dual operation of VHF and UHF stations by a common licensee in a single market, and the proposal to establish a "pool" of UHF channels for future use by VHF stations. In that same document we called attention to the fact that there were other proposals in the proceeding which would be given further consideration in subsequent actions by the Commission. In this document we will deal with those proposals to relax certain technical requirements and allow the use of directive transmitting antennas. These proposals were all designed to encourage more extensive use of UHF television channels to provide television broadcast service to the public. While we recognize the possibility that a substantial increase in the number of operating UHF stations may alter the basic considerations that have led us to adopt the amendments set forth herein we believe that these actions will stimulate interest in UHF television broadcasting and are warranted. However, the rules adopted herein should be considered provisional in nature and will be reviewed at frequent intervals. If at

any time experience indicates that more restrictive requirements are needed, appropriate rule making proceedings will be instituted.

VESTIGIAL SIDEBAND FILTER ELIMINATION

2. In the original notice of proposed rule making we proposed to eliminate the general requirement for a specified attenuation of the lower sideband. Electron Corporation of Dallas, Texas, supports the proposal on the grounds that it would reduce the installation and operating costs of UHF stations; that it would create no serious interference problem since the UHF band is not crowded; and that it would have no ill effect on picture quality or service range. Zenith Radio Corporation sees no harm in this proposal until the UHF band becomes congested. Fetzer Broadcasting Company, licensee of WKZO-TV, Kalamazoo, Michigan, supports the proposal with the observation that this together with other proposed relaxations of technical requirements would collectively result in substantial saving in installation and operating costs. American Broadcasting Company supports the proposal as a partial solution but recommends that we undertake an overall review of all present transmission standards. They suggest the possibility that new information theory may make possible a better TV system than the present one. They recognize, of course, that such a study is beyond the scope of the subject proceeding. WCSC, Inc., licensee of WCSC, Charleston, South Carolina, simply endorses the proposal. The Association of Maximum Service Telecasters, Inc. (AMST), says that elimination of the sideband filter would result in a saving of around \$5000 and this is significant whether it is a high-power or low-power station.

3. Electronic Industries Association suggests that rather than eliminate the sideband attenuation requirement entirely, we adopt a formula which would make the attenuation a function of the transmitter power. The recommended formula would require an attenuation of the lower sideband, outside the assigned channel, expressed in decibels equal to $10 \log \frac{\text{Power}}{100}$ in watts up to a maximum of 20 decibels. During the transmission of color signals the lower sideband component of the color subcarrier would be required to be attenuated by the above amount plus 22 decibels up to a maximum of 42 decibels. EIA believes that such a requirement would be desirable and would reduce the hazard of harmful interference while, at the same time, offering considerable saving in equipment and maintenance costs for the lower powered transmitters. Adler Electronics, Inc. and Philco Corporation concur in the EIA recommendation.

4. We have given careful consideration to the recommendation of EIA and the comments of others and have concluded that the imposition of requirements for the attenuation of lower sidebands based on the suggested formula would require extensive and complex changes in our rules and charts

where the required attenuation is less than that specified in our present rules. We can achieve somewhat the same result by eliminating the requirement for a specified reduction of the lower sideband for stations employing transmitters with a power output of 1 kilowatt or less and requiring the attenuation specified in our present rules for stations employing higher power transmitters. The risk of harmful interference resulting from failure to reduce the lower sideband radiation to the extent specified in our present rules is substantially less for the lower powered transmitters than for the high powered transmitters. Should such interference occur even when low power transmitters are employed we may at that time require the licensee to comply with the requirements imposed on higher powered stations.

5. Triangle Broadcasting Corporation, licensee of WSJS-TV, Winston-Salem, North Carolina, and Triangle Publications, Inc., oppose the elimination of the requirement. Triangle Broadcasting Corporation claims that elimination of the requirement for a temporary period would result in a negligible reduction in the initial investment and would not solve the basic problems of UHF stations. Triangle Publications, Inc., says such an action would be short-sighted because the slight saving in costs would be outweighed by the potential deterioration of service. They pose the question that if this step is warranted for UHF stations why should it not also be applied to VHF stations? We wish to point out again that the channels allocated for TV in the VHF portion of the spectrum are heavily congested and are interspersed with bands of frequencies allocated to other services. The hazard of harmful interference to other stations and services is much greater in the VHF band than in the lightly occupied UHF television band with only one channel (Channel 14) immediately adjacent to a lower band used by a service other than broadcasting. With respect to Channel 14 we have decided that it should be excluded from the rule and therefore stations on this channel will continue to observe the existing vestigial sideband requirements.

USE OF DIRECTIONAL TRANSMITTING ANTENNAS

6. In order to give prospective UHF operators the widest choice in antenna sites and to permit them to concentrate the available signal power in a manner designed to provide the best service to the public as well as enhance the opportunity for a successful UHF operation, we proposed to permit the unrestricted use of directive transmitting antennas by UHF stations. In the present state of UHF receiver technology, a line-of-sight path usually assures an adequate UHF signal at the receiver. Elevated transmitting sites are frequently found outside of the community intended to be served and without the use of a directive transmitting antenna, it would be necessary to employ a high-powered transmitter to get an adequate signal into the community. Cost considerations could discourage the inauguration of UHF

service in such an area. In many cases, the needed increase in signal power could be obtained with a lower powered transmitter and a directive antenna at less cost. After such operations have been established on a firm economic footing it is expected that the trend will be toward higher powered transmitters and less directivity and service will be extended to the more sparsely settled areas.

7. American Broadcasting Company, WCSC, Inc., AMST, Triangle Publications, Inc., Fetzter Broadcasting Company, Electronic Industries Association, Atlanta Newspapers, Inc., Adler Electronics, Inc., Zenith Radio Corporation, and Electron Corporation, all endorse the proposal to permit unrestricted use of directive transmitting antennas by UHF television broadcast stations. Triangle Broadcasting Corporation sees a danger of "ghosting" in deep nulls but indicates that there might be some advantage to permitting the use of directive antennas to protect the service areas of existing stations so that short spaced assignments of low UHF channels might be made. They recommended that the nulls be limited to between 15 and 20 decibels.

8. On the basis of the comments received we believe that the unrestricted use of directive transmitting antennas should be permitted for UHF stations employing transmitters with a power output of 1 kilowatt or less. It is reasonable to assume that the most effective use of available power will be more important to the lower powered stations than to those employing higher powered transmitters. Furthermore, the ultimate replacement of a directive antenna array to obtain more uniform coverage, which should be the objective of all licensees, would be appreciably more costly for antennas capable of handling high power than for those suitable for use with relatively low powered transmitters. We are, however, amending our rules to allow the higher powered stations to use directive transmitting antennas with a maximum to minimum radiation pattern ratio of 15 decibels. With respect to the use of directive antennas to permit assignment of stations at less than the present minimum separations, this is beyond the scope of the instant proceeding.

REMOTE CONTROL

9. It was proposed to permit the operation of UHF television broadcast stations by remote control. This is another measure aimed at reducing the initial investment and the operating expense of UHF stations. While it was realized that the complex equipment employed in a television broadcasting operation requires more direct supervision by qualified technical personnel than the simpler apparatus used in aural broadcasting stations, it was felt that the feasibility of unattended remote control should be explored.

10. With the exception of Triangle Broadcasting Corporation, all comment directed to this proposal favored remote control of UHF television broadcasting stations. Triangle Broadcasting states that "Up to this time we have not seen

a UHF transmitter which could be operated by unattended remote control." While admitting that this was more of a policy than engineering decision, they feel that there are an adequate number of good technical reasons for having a UHF transmitter under the constant surveillance of a first-class operating engineer. The reasons are not stated. Unfortunately, none of the comments were directed to the specific problems attendant upon remote control of UHF transmitters. However, we are still of the opinion that the development of suitable remote control systems could offer economies that would encourage the inauguration of UHF service. Therefore, in order to stimulate research and development into the problem, we are amending our rules to permit remote control operation of UHF television broadcast stations upon a satisfactory showing that the proposed system of remote control will provide the degree of supervision and accomplish the necessary adjustments to insure operation of the transmitter in accordance with the technical requirements of the rules.

RATIO OF VISUAL TO AURAL POWER

11. The Commission proposed to liberalize the rules relating to the required ratio of visual to aural power for UHF television broadcast stations. Present rules require the radiated aural power of all TV stations to be between 50 and 70 percent of the peak visual power radiated. We proposed to allow the aural power of UHF stations to be as little as 10 percent of the peak visual power. Such a provision would result in a substantial saving in investment and operating costs.

12. Atlanta Newspapers, Inc., Fetzter Broadcasting Company, WCSC, Inc., and American Broadcasting Company endorse the proposal without comment. Triangle Broadcasting Corporation expresses the view that the proposed reduction in required aural power is a step in the right direction. Among the benefits expected to be derived would be alleviation of interference on the upper adjacent channel. It would also reduce tube costs and power bills. Adler Electronics, Inc. points out that the proposed reduction would result in a substantial saving in initial construction and operating costs. The saving would be greater in low power transmitters where a common amplifier for the visual and aural signal could be used. Adler states that it is a well known fact that the usable service range of the aural signal extends well beyond the usable service range of the visual signal with the present 2 to 1 (3 db) ratio. A decrease in required aural power would tend to equalize the visual and aural coverage and at the same time reduce the nuisance range of the aural signal. Adler cites tests conducted by TASO (Television Allocation Study Organization) which compared television broadcast transmissions by stations employing visual to aural power ratios of 2 to 1 (3 db), 4 to 1 (6 db), and 10 to 1 (10 db) which failed to show any tangible reduction in coverage at the higher ratios. Adler also refers to individual station reports on file with the Commission where ratios as

high as 100 to 1 (20 db) have been used. AMST also urges adoption of the proposal.

13. Philco Corporation expresses the belief that the proposed reduction in aural power would significantly deteriorate receiver performance and therefore result in a reduction of the service coverage of UHF. They go on to say "Our receiver design experience indicates that sound performance is a critical area of receiver design that has received the concentrated attention of design engineers. Present design and performance are believed optimum and more stringent requirements, due to reduced aural transmitter power, will result in an economic penalty to the consumer or, as noted above, decreased service range." They recommended against the proposed change. Electron Corporation opposes the reduction in aural power because of certain characteristics of TV receivers employing intercarrier sound systems. They are concerned mostly with the deterioration of the sound in an inter-carrier receiver due to excessive white modulation. It is their view that a reduction in sound power would aggravate this condition. They recommend instead that we look toward an increase in white level with a corresponding increase in sound power. It is admitted that this condition would be a problem mostly in the "fringe" area of Grade B service and beyond. Electronic Industries Association submits that it is an organization of manufacturers of TV receivers, transmitters, and also equipment used in the non-broadcast services and that the comments attempt to reflect the views of these diverse groups. With respect to the proposed decrease in the ratio of aural to visual power they state that TV transmitters can be built for any desired aural power output. It is estimated that the cost of a UHF television broadcast transmitter can be reduced approximately 10-15 percent if the aural power is reduced to 20-25 percent (6-7 db) of the peak visual power, and the cost can be reduced to 20-25 percent if the aural power is reduced approximately 10 percent (10 db) of peak visual power. Tube and power costs would be reduced at about the same order of magnitude. This reduction in equipment and operating costs could be significant for lower powered stations because of probably limited financing. They go on to say, however, that while the proposed change would directly benefit the individual broadcaster, field and laboratory measurements at UHF substantiate the fact that a 7 db reduction in sound power added to the present permissible 3 db reduction, would result in a deterioration of receiver performance and some reduction in service coverage on UHF channels. Zenith Radio Corporation strongly opposes the proposed reduction of permissible sound power to 10 percent of the peak visual power. They cite the results of tests made at a distance of 5.4 miles from an experimental UHF station operated by Zenith employing a Zenith UHF receiver for reception. They found that for each decibel reduction in sound power there was a 2 decibel change in signal-to-noise ratio at the

receiver. The change in sound reception radius was approximately .78 mile per decibel drop in sound power for a 500 foot transmitting antenna.

14. The comments on these proposals are conflicting in a number of respects. The receiver manufacturers of course are concerned lest the reduction in sound power adversely affect the performance of their product. Transmitter manufacturers, on the other hand, while willing and able to supply transmitters meeting the present requirements, recognize the economies which can be effected by a reduction in the required sound power. Broadcasters favor the proposal because of the potential saving in equipment and operating costs. There is general agreement among all parties commenting that if there is a significant deterioration of sound quality or loss of service it will occur in areas of low signal strength and will not affect areas of high signal levels. In reaching a decision on this proposal we have carefully weighed the above comments and have turned also to other data available to us.

15. It will be recalled that TASO investigated the effect of reducing the relative power of the aural transmitter. Because of a lack of unanimity among the Panels investigating the matter (Panels 1, 2, 3, and 5) TASO failed to make a strong recommendation regarding aural power reduction. Panel 1 reported: " * * * the committee recommends a ratio of at least 4:1 to effect savings on original equipment costs and in operating costs" (Report of Panel 1, § 1.2.2). Panel 3, in reviewing the data it had obtained as a result of actual tests involving aural power reduction of as much as 10 db, reported, "It appears, however, that adequate service can be obtained with power ratios considerably less than those currently used." (Report of Panel 3, § 3.1.) Panel 2 was the only group reporting unfavorably on the matter.

16. A review of the Panel 2 data indicates that the detrimental effect upon reception by an aural power reduction may not be as serious as the Panel 2 Report implies. Referring to Figure 2 of the Committee 2.6 Report, curves are shown which, for various levels of picture signal, indicate the degree by which reductions in aural power may be expected to reduce the signal-to-noise ratio at the receiver output. Assuming a Grade 5 (Inferior) picture which might provide an open circuit voltage of 80 microvolts from the antenna and transmission line, Figure 2 shows that there could be expected, on the average a loss of 0.125 times the reduction in aural power. For a further reduction of aural power of 7 db, the reduction in signal-to-noise ratio at the receiver audio output would be about 0.9 db. Thus, according to the Panel 2 data, a television signal just 3 db stronger than this marginal example would evidence, on the average, no noticeable degradation of signal-to-noise ratio at the audio output.

17. The effect of an additional 7 db reduction in aural power can also be estimated through theoretical considerations as follows: Assume reception of a television signal where the noise level is

only 20 db below the peak visual signal. (This corresponds to the TASO Grade 5 rating, an "Inferior" picture.) Under present standards, the aural carrier-to-noise level would be 3 db less, or 17 db. However, since the audio portion of the receiver is limited to a passband of 15 kilocycles, there should be an extra margin of 26 db resulting from the narrower bandwidth. To this may be added the advantage of approximately 22 db accruing from the use of frequency modulation and de-emphasis in the receiver. Thus, a signal-to-noise ratio approaching 65 db would be expected at the audio output. This would allow a power reduction of 7 db at the transmitting end without noticeable degradation at the receiver.

18. Nearly all of the TV receivers in use today employ the intercarrier type of sound receivers. In this type of receiver, the aural signal is attenuated in the combined picture and sound i.f. amplifier to minimize the effect of the picture modulation on the sound and to prevent a loss of picture quality because of the aural signal. The laboratory tests of TASO Committee 2.6 indicate that, within the range of useful signals, a reduction in aural power would not impair the operation of intercarrier receivers. A further confirmation of this may be found in the practice of master antenna system operators who, in order to provide their customers signals on adjacent channels, attenuate the aural signals by as much as 16 db before putting them on the distribution system.

19. Concern has been expressed that a reduction in aural power might result in poor aural reception in areas of disturbed fields. In such areas the ratio of aural to visual fields may vary widely from location to location and in uncorrelated fashion. At a given reception point and for a given antenna orientation, the aural signal may be much lower than the visual—or vice versa. This condition can be alleviated by relocating or reorienting the receiving antenna.

20. Two further benefits would accrue from a reduction in relative sound power:

(a) Adjacent channel interference (from the aural carrier on the next lower channel) would be reduced in a direct ratio with the power reduction.

(b) If the aural power is reduced to a value 10 db below visual peak power, the resulting ratio may permit transmission of both aural and visual signals on the same transmitter. Because of intermodulation problems, this has not been found practicable with the present 3 db ratio.

21. On August 24, 1962, our Eastern Television Enforcement Unit made observations on WNEP-TV, Channel 16, Scranton, Pennsylvania. At the time of the observations, WNEP-TV was operating with aural power of 10 percent of the peak visual power, pursuant to a special temporary authorization issued by the Commission. Except in the case of certain older type receivers located on the fringe of the service area the reduced sound power had no noticeable effect on the quality of reception. Dealers and servicemen reported that there were no complaints of inferior sound on WNEP-

TV during the period it had been operating with reduced sound power.

22. The experience of our field engineer in the Wilkes-Barre area is typical. While computations will show that a reduction in aural power will result in some degradation at some places, numerous other factors affecting sound and picture quality are usually so predominant as to mask this effect to a great extent. Therefore, having carefully weighed all of the factors involved we conclude that the advantages in permitting a UHF station to operate with radiated sound power 10 decibels below the peak visual radiated power outweigh the disadvantages and our rules should be amended accordingly. We wish to emphasize that this reduction in aural power is permissive, and is not a requirement. Any UHF station may employ radiated sound power up to 70 percent of the peak visual radiated power. We are not extending this provision to stations operating on VHF channels because that is beyond the scope of this proceeding which is aimed at fostering expanded use of UHF channels. Existing UHF stations and new UHF stations may find it economically feasible to employ higher effective radiated visual power if they are not required to make a commensurate increase in aural power.

23. AMST suggested that we relax the operator requirements for UHF stations employing transmitters with a power output of 1 kilowatt or less, to provide for additional saving in operating expense. Our experience to date does not make this step seem desirable at this time. The other relaxations adopted herein make adequate technical supervision even more important.

24. In view of the foregoing, we have decided to adopt certain of the proposals set forth in the notice of proposed rule making which will modify specified requirements as they apply to television broadcast stations operating on UHF channels. The remaining portions of the proceeding will be disposed of in subsequent orders.

25. Authority for the amendments adopted herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

26. Accordingly, it is hereby ordered, That effective May 6, 1963, Part 3 of the Commission rules and regulations is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 308, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Adopted: March 27, 1963.

Released: April 2, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Acting Secretary.

Amend Part 3, Subpart E as follows:

1. Section 3.661 is amended to read as follows:

§ 3.661 Operator requirements.

One or more operators holding a valid radiotelephone first class operator license

¹ Commissioner Bartley dissenting.

shall be on duty at the place where the transmitting apparatus is located or at a remote control point established pursuant to the provisions of § 3.676, and in actual charge thereof whenever the transmitter is delivering power to the transmitting antenna. The original license (or FCC Form 759) of each station operator shall be posted at the place where he is on duty. The licensed operator on duty and in charge of a television broadcast transmitter may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of license which he holds and the rules and regulations governing such other stations. However, such other duties shall in no wise impair or impede the required supervision of the television broadcast transmitter.

2. Add a new § 3.676 to read as follows:

§ 3.676 Remote control operation.

(a) Television broadcast stations operating on Channels 14-83 may be authorized to operate by remote control upon a satisfactory showing as to the manner of compliance with the following requirements:

(1) Suitable control circuits shall be installed to:

(i) Turn the transmitter on and off at will.

(ii) Determine the power output of the visual and aural final radio frequency amplifiers or the power delivered to the antenna.

(iii) Adjust the power output of the final radio frequency amplifier to compensate for variations in line voltage.

(iv) Make such adjustments as may be necessary to insure that the characteristics of the transmitted signal comply in all respects with the technical requirements of the rules.

(2) The control point shall be equipped with apparatus suitable for observing the waveform and other pertinent characteristics of the transmitted visual signal and the percent of modulation of the transmitted aural signal.

(3) The control circuits from the control point to the transmitter shall be so designed and installed that open circuits, short circuits, accidental grounding, or other line faults will not activate the transmitting apparatus and any fault which results in loss of control of the transmitting apparatus will automatically remove power from the transmitting antenna.

(4) The transmitting equipment and control equipment shall be adequately protected against tampering or activation by unauthorized persons.

(b) Where a transmitter is operated by remote control the transmitting apparatus and associated controls shall be checked as often as is necessary to insure proper operation and confirm the accuracy of the transmitter data sent to the control point over the control circuits and in all cases at least once each week until it can be demonstrated to the Commission that checks at less frequent intervals are satisfactory.

3. Section 3.682(a) (4), (9), and (15) are amended to read as follows:

§ 3.682 Transmission standards and changes.

(a) *Transmission standards.* * * *

(4) The visual transmission amplitude characteristic shall be in accordance with the chart designated as Figure 5 of § 3.699: *Provided, however,* That for stations operating on Channel 15-83 and employing a transmitter with maximum peak visual power output of 1 kilowatt or less the visual transmission amplitude characteristic may be in accordance with the chart designated as Figure 5(a) of § 3.699.

(9) A carrier shall be modulated within a single television channel for both picture and synchronizing signals. For monochrome transmission, the two signals comprise different modulation ranges in amplitude, in accordance with the charts designated as Figures 5 and 7 of § 3.699 for stations operating on Channels 2-14 or Figure 5(a) and 7 for stations operating on Channels 15-83 and employing a transmitter with maximum peak visual power output of 1 kilowatt or less. For color transmission, the two signals comprise different modulation ranges in amplitude except where the chrominance penetrates the synchronizing region and the burst penetrates the picture region, in accordance with the charts designated as Figures 5 and 6 of § 3.699 for stations operating on Channels 2-14 or Figure 5(a) and 6 for stations operating on Channels 15-83 and employing a transmitter with maximum peak visual power output of 1 kilowatt or less.

(15) The effective radiated power of the aural transmitter of stations operating on Channels 2-13, shall not be less than 50 percent nor more than 70 percent of the peak radiated power of the visual transmitter. The effective radiated power of the aural transmitter of stations operating on Channels 14-83 shall not be less than 10 percent nor more than 70 percent of the peak radiated power of the visual transmitter.

4. Section 3.685(e) is amended to read as follows:

§ 3.685 Transmitter location and antenna system.

(e) An antenna designed or altered to produce a non-circular radiation pattern in the horizontal plane, is considered to be a directional antenna. Directional antennas may be employed for the purpose of improving service upon an appropriate showing of need. Stations operating on Channels 2-13 will not be permitted to employ a directional antenna having a ratio of maximum to minimum radiation in the horizontal plane, in excess of 10 decibels. Stations operating on Channels 14-83 with transmitters delivering a peak visual power output of more than 1 kilowatt may employ directive transmitting antennas with a maximum to minimum radiation in the horizontal plane of not more than 15 decibels. Stations operating on Channels 14-83 and employing transmitters delivering a peak visual power output of 1 kilowatt or less are not limited as to

the ratio of maximum to minimum radiation.

5. Section 3.687(a) (1), (2), (3), and (6) are amended as follows:

§ 3.687 Transmitters and associated equipment.

(a) *Visual transmitter.* (1) For monochrome transmission only, the overall attenuation characteristics of the transmitter, measured in the antenna transmission line after the vestigial sideband filter (if used), shall not be greater than the following amounts below the ideal demodulated curve. (See Fig. 11 of § 3.699.)

- 2 db at 0.5 mc.
- 2 db at 1.25 mc.
- 3 db at 2.0 mc.
- 6 db at 3.0 mc.
- 12 db at 3.5 mc.

The curve shall be substantially smooth between these specified points, exclusive of the region from 0.75 to 1.25 mc. Output measurement shall be made with the transmitter operating into a dummy load of pure resistance and the demodulated voltage measured across this load. The ideal demodulated curve is that shown in Figure 11 of § 3.699. Stations operating on Channels 15-83 and employing a transmitter delivering maximum peak visual power output of 1 kilowatt or less will not be required to comply with this provision.

(2) For color transmission, the standard given by subparagraph (1) of this paragraph applies except as modified by the following: A sine wave of 3.58 mc introduced at those terminals of the transmitter which are normally fed the composite color picture signal shall pro-

duce a radiated signal having an amplitude (as measured with a diode on the R.F. transmission line supplying power to the antenna), which is down 6 ± 2 db with respect to a signal produced by a sine wave of 200 kc. In addition, the amplitude of the signal shall not vary by more than ± 2 db between the modulating frequencies of 2.1 and 4.18 mc. Stations operating on Channels 15-83 and employing a transmitter delivering maximum peak visual power output of 1 kilowatt or less will not be required to comply with this provision.

(3) The field strength or voltage of the lower sideband, as radiated or dissipated and measured as described in subparagraph (4) of this paragraph, shall not be greater than -20 db for a modulating frequency of 1.25 mc or greater and in addition, for color, shall not be greater than -42 db for a modulating frequency of 3.579545 mc (the color subcarrier frequency). For both monochrome and color, the field strength or voltage of the upper sideband as radiated or dissipated and measured as described in subparagraph (4) of this paragraph shall not be greater than -20 db for a modulating frequency of 4.75 mc or greater. For stations operating on Channels 15-83 and employing a transmitter delivering maximum peak visual power output of 1 kilowatt or less the field strength or voltage of the upper and lower sidebands, as radiated or dissipated and measured as described in subparagraph (4) of this paragraph shall depart from the visual amplitude characteristic, Figure 5(a) of § 3.699, by no more than the following amounts:

- 2 db at 0.5 Mc/s below visual carrier frequency;

- 2 db at 0.5 Mc/s above visual carrier frequency;
- 2 db at 1.25 Mc/s above visual carrier frequency;
- 3 db at 2.0 Mc/s above visual carrier frequency;
- 6 db at 3.0 Mc/s above visual carrier frequency;
- 12 db at 3.5 Mc/s above visual carrier frequency;
- 8 db at 3.58 Mc/s above visual carrier frequency (for color transmission only).

The field strength or voltage of the upper and lower sidebands, as radiated or dissipated and measured as described in subparagraph (4) of this paragraph shall not exceed a level of -20 db for a modulating frequency of 4.75 Mc/s or greater. If interference to the reception of other stations is caused by out-of-channel lower sideband emission, the technical requirements applicable to stations operating on Channels 2-13 shall be met.

(6) The radio frequency signal, as radiated, shall have an envelope as would be produced by a modulating signal in conformity with § 3.682 and Figure 6 or 7 of § 3.699, as modified by vestigial sideband operation specified in Figure 5 of § 3.699. For stations operating on Channels 15-83 the radio frequency signal as radiated, shall have an envelope as would be produced by a modulating signal in conformity with § 3.682 and Figures 6 or 7 of § 3.699.

6. In § 3.699, the text is amended and Figure 5a is added, as follows:

§ 3.699 Engineering charts.

This section consists of the following Figures 1-5, 5a, and 6-12 and "slider for use with Figures 9 and 10".

**IDEALIZED PICTURE TRANSMISSION
AMPLITUDE CHARACTERISTIC**

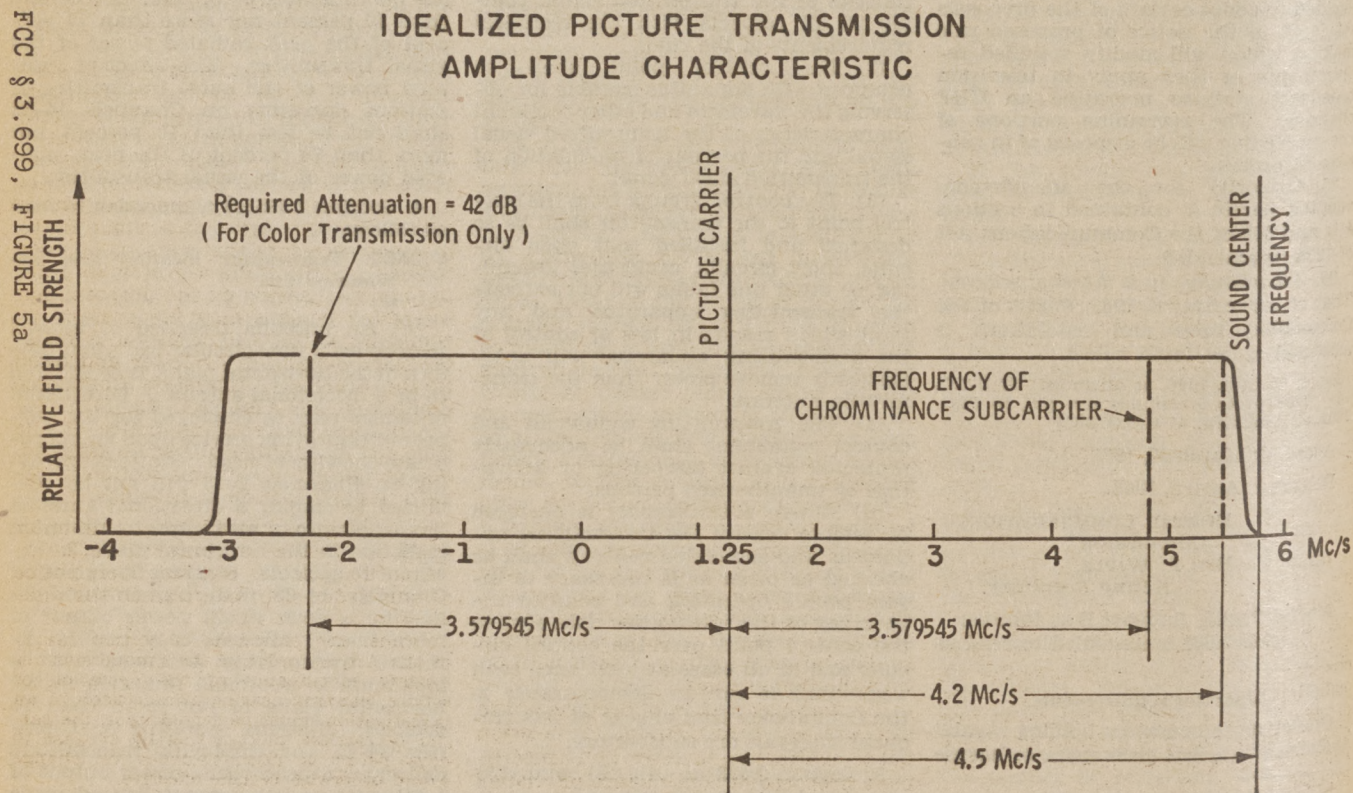


FIGURE 5(a).

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1—GENERAL RULES OF PRACTICE

Special Rules Pertaining to Proceedings for the Discontinuance or Change of Train or Ferry Service

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 26th day of March A.D. 1963.

There being under consideration the Commission's general and special rules of practice, and good cause appearing therefor:

It is ordered, That the general and special rules of practice of the Commission be, and they are hereby, amended by the addition of the following section:

§ 1.246 Special rules pertaining to proceedings for the discontinuance or change of train or ferry service.

(a) *Scope of special rules.* These special rules govern procedure before the Commission in proceedings commenced by carriers subject to part I of the Interstate Commerce Act, under and pursuant to the provisions of section 13a of said Act, upon a notice under paragraph (1) of said section or by a petition under paragraph (2) thereof, with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.

(b) *General rules otherwise applicable.* Except as provided otherwise in these special rules, proceedings upon notices and petitions filed under section 13a shall be governed by the Commission's general rules of practice.

(c) *Notices and petitions by carriers.* A notice filed under paragraph (1), and a petition under paragraph (2), of said section 13a shall be prepared in accordance with and contain the information called for by rules and regulations then in force with respect to such a notice or petition. See Part 43 of this chapter.

(d) *Notice to interested parties.* Notice of the institution of any investigation or of the time and place of any hearing, conference, or other proceeding will be given by the Commission to the carrier or carriers involved, the Governor and appropriate regulatory agency of each State in which the train or ferry affected is operated, protestants, and other interested parties of record, by mailing to them the order or notice instituting the investigation or assigning the hearing, conference, or other proceeding. Similar notice will be given to the same parties of changes in the time or place of hearing, conference, or other proceeding when time permits notice by mail; but, if telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who have requested telegraphic notice at their expense.

(e) *Participation at hearings without intervention.* In an investigation proceeding under section 13a(1), or in proceedings upon a petition filed under section 13a(2), an appearance may be entered at the hearing without filing a petition in intervention or other pleading, if there is full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented. A person in whose behalf an appearance is entered in this manner becomes a party to the proceeding.

(f) *Complaints and protests.* When a notice is filed with the Commission pursuant to the provisions of section 13a(1), proposing to discontinue or change, in whole or in part, the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, any interested person opposed to such proposal may make his opposition known by filing with the Commission a complaint or protest. The complaint or protest may be by telegram, letter, or other writing, of which only an original need be filed. Service of copies thereof upon the carrier proposing the discontinuance or change is not required. A complaint or protest should identify the proceeding by reference to the name of the carrier and to the particular train or ferry involved, and should state the interest of the complainant or protestant and the grounds for the position taken in opposition to the proposal. In order to be considered by the Commission, a complaint or protest must be filed with the Commission in Washington, D.C., not later than 15 days before the date when the carrier proposes to make effective the subject discontinuance or change. Replies to a protest or complaint are not contemplated, and failure to reply will not be construed as an admission of any allegations contained therein.

(g) *Petitions for reconsideration of orders instituting an investigation.* Petitions for reconsideration of an order instituting an investigation in relation to a proposed change or discontinuance may be filed by the carrier or carriers affected within 15 days after the date of service of the order. An original and 6 copies shall be furnished for the use of the Commission, and copies thereof shall be served upon the persons to whom copies of the notice of the carrier were required to be mailed by the rules and regulations prescribed by the Commission. See § 43.5 of this chapter. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 15 days after the filing of such petition with the Commission.

(h) *Reconsideration of decision not to institute an investigation.* A decision not to institute an investigation concerning a proposed discontinuance or change

of service may be made the subject of a petition for reconsideration by any interested person, provided the petition reaches the Commission at least two workdays prior to the effective date of the proposed discontinuance or change of service. If an order is desired requiring continuance of the service pending hearing and decision upon investigation, the petition should reach the Commission at least two workdays before the Commission's authority to enter such an order will expire.¹ For the purposes of this section, a workday shall be considered any day except Saturday, Sunday, or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a workday within the meaning of this section.) Petitions submitted under this paragraph shall be filed with the Secretary of the Commission by 4:00 p.m., United States Standard Time (or by 4:00 p.m., Local Daylight Saving Time if that time is observed in the District of Columbia.) Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. The request for reconsideration shall contain the following prefatory statement: "This matter requires expedited handling under the Commission's special rules of practice". If in writing, an original and six copies of the petition shall be furnished for the use of the Commission. Telegraphic notice or its equivalent must be given by the petitioner to the carrier or carriers affected, and certification that such notice has been given must accompany the request for reconsideration. Action may be taken upon the petition without awaiting a reply, but if a reply is received prior to a decision upon the petition it will be given consideration. A petition not timely filed will be rejected by the Secretary.

(i) *Protests.* As the applicable statute requires a full hearing in the State involved before the Commission may grant a petition under the provisions of section 13a(2), for authority to discontinue or change the operation or service of any train or ferry operated wholly within the boundaries of a single State, it is not necessary that persons opposed to such a petition file a protest in order to obtain a hearing on the proposal, but interested persons may file protests by complying with § 1.40 or they may register their opposition by letter addressed to the Secretary, Interstate Commerce Commission, Washington 25, D.C., for the purpose of receiving notice of the time and place of hearing when assigned. See paragraph (e) of this section in regard to participation at hearings.

It is further ordered, That this order shall be effective on May 15, 1963.

And it is further ordered, That notice of this order shall be given to the gen-

¹ Under the provisions of section 13a(1) of the Act, an order of the Commission requiring continuance of the operation or service, pending hearing and decision in an investigation, must be served upon the carrier or carriers affected thereby at least 10 days before a discontinuance or change would otherwise become effective.

RULES AND REGULATIONS

eral public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

(Secs. 12, 13a, 17, 24 Stat. 383, as amended, 40 Stat. 270, as amended, 72 Stat. 571; 49 U.S.C. 12, 13a, 17)

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-3608; Filed, Apr. 5, 1963;
8:48 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to sections 2 (in part) and 5 of the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 809, 826), such regulations are amended as follows:

PARAGRAPH 1. Section 1.401 is amended by revising paragraph (5) of section 401(a), by adding paragraphs (7), (8), (9), and (10) to section 401(a), by redesignating subsection (c) of section 401 as subsection (h), by inserting after subsection (b) of section 401 new subsections (c), (d), (e), (f), and (g), and by adding a historical note. These amended and added provisions read as follows:

§ 1.401 Statutory provisions; qualified pension, profit-sharing, and stock bonus plans.

Sec. 401. *Qualified pension, profit-sharing, and stock bonus plans*—(a) *Requirements for qualification.* * * *

(5) A classification shall not be considered discriminatory within the meaning of paragraph (3)(B) or (4) merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 3121(a)(1) (relating to the Federal In-

surance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 3121(a)(1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law. For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c)(1) means such individual's earned income (as defined in subsection (c)(2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary or his delegate, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the amounts credited to the employees' accounts are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by paragraph (4), may not be used for designated employees in the event of early termination of the plan.

(8) A trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), a trust forming part of such plan shall not constitute a qualified trust under this section unless, under the plan, the entire interest of each employee—

(A) Either will be distributed to him not later than his taxable year in which he attains the age of 70½ years, or, in the case of an employee other than an owner-employee (as defined in subsection (c)(3)), in which he retires, whichever is the later, or

(B) Will be distributed, commencing not later than such taxable year, (i) in accordance with regulations prescribed by the Secretary or his delegate, over the life of such employee or over the lives of such employee and his spouse, or (ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee

under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.

(10) In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3))—

(A) Paragraph (3) and the first and second sentences of paragraph (5) shall not apply, but—

(i) Such plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of or on behalf of employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, and

(ii) Such plan shall not be considered discriminatory within the meaning of paragraph (4) solely because under the plan contributions described in subsection (e)(3)(A) which are in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a)(10)) for the taxable year may be made on behalf of any owner-employee; and

(B) A trust forming a part of such plan shall constitute a qualified trust under this section only if the requirements in subsection (d) are also met.

(c) *Definitions and rules relating to self-employed individuals and owner-employees.* For purposes of this section—

(1) *Employee.* The term "employee" includes, for any taxable year, an individual who has earned income (as defined in paragraph (2)) for the taxable year. To the extent provided in regulations prescribed by the Secretary or his delegate, such term also includes, for any taxable year—

(A) An individual who would be an employee within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(B) An individual who has been an employee within the meaning of the preceding sentence for any prior taxable year.

(2) *Earned income*—(A) *In general.* The term "earned income" means the net earnings from self-employment (as defined in sections 1402(a)) to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B)), but such net earnings shall be determined—

(i) Without regard to paragraphs (4) and (5) of section 1402(c),

(ii) In the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c), and

(iii) Without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items.

For purposes of this subparagraph, sections 911(b) and 1402, as in effect for a taxable year ending on December 31, 1962, and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, shall be treated as having been in effect for all taxable years ending before such date.

(B) *Earned income when both personal services and capital are material income-producing factors.* In applying section 911(b) for purposes of subparagraph (A), in the case of an individual who is an employee within the meaning of paragraph (1) and who is engaged in a trade or business in

which both personal services and capital are material income-producing factors and with respect to which the individual actually renders personal services on a full-time, or substantially full-time, basis, so much of his share of the net profits of such trade or business as does not exceed \$2,500 shall be considered as earned income. In the case of any such individual who is engaged in more than one trade or business with respect to which he actually renders substantial personal services, if with respect to all such trades or businesses he actually renders personal services on a full-time, or substantially full-time, basis, there shall be considered as earned income with respect to the trades or businesses in which both personal services and capital are material income-producing factors—

(i) So much of his share of the net profits of such trades or businesses as does not exceed \$2,500, reduced by

(ii) His share of the net profits of any trade or business in which only personal services is a material income-producing factor.

The preceding sentences shall not be construed to reduce the share of net profits of any trade or business which under the second sentence of section 911(b) would be considered as earned income of any such individual.

(3) *Owner-employee.* The term "owner-employee" means an employee who—

(A) Owns the entire interest in an unincorporated trade or business, or

(B) In the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary or his delegate, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) *Employer.* An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) *Contributions on behalf of owner-employees.* The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) By the employer for an owner-employee, and

(B) By an owner-employee as an employee.

(d) *Additional requirements for qualification of trusts and plans benefiting owner-employees.* A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1) In the case of a trust which is created on or after the date of the enactment of this subsection, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the trustee is a bank, but a person (including the employer) other than a bank may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, and exchanges). This paragraph shall not apply to a trust created or organized outside the United States before the date of the enactment of this subsection

if, under section 402(c), it is treated as exempt from tax under section 501(a) on the day before such date; or, to the extent provided under regulations prescribed by the Secretary or his delegate, to a trust which uses annuity, endowment, or life insurance contracts of a life insurance company exclusively to fund the benefits prescribed by the trust, if the life insurance company supplies annually such information about trust transactions affecting owner-employees as the Secretary or his delegate shall by forms or regulations prescribe. For purposes of this paragraph, the term "bank" means a bank as defined in section 581, a corporation which under the laws of the State of its incorporation is subject to supervision and examination by the commissioner of banking or other office of such State in charge of the administration of the banking laws of such State, and, in the case of a trust created or organized outside the United States, a bank or trust company, wherever incorporated, exercising fiduciary powers and subject to supervision and examination by governmental authority.

(2) Under the plan—

(A) The employees' rights to or derived from the contributions under the plan are non-forfeitable at the time the contributions are paid to or under the plan; and

(B) In the case of a profit-sharing plan, there is a definite formula for determining the contributions to be made by the employer on behalf of employees (other than owner-employees).

Subparagraph (A) shall not apply to contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by subsection (a) (4), may not be used to provide benefits for designated employees in the event of early termination of the plan.

(3) The plan benefits each employee having a period of employment of 3 years or more. For purposes of the preceding sentence, the term "employee" does not include any employee whose customary employment is for not more than 20 hours in any one week or is for not more than 5 months in any calendar year.

(4) Under the plan—

(A) Contributions or benefits are not provided for any owner-employee unless such owner-employee has consented to being included under the plan; and

(B) No benefits may be paid to any owner-employee, except in the case of his becoming disabled (within the meaning of section 213(g) (3)), prior to his attaining the age of 59½ years.

(5) The plan does not permit—

(A) Contributions to be made by the employer on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a) (10)) for the taxable year;

(B) In the case of a plan which provides contributions or benefits only for owner-employees, contributions to be made on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a) (10)) for the taxable year; and

(C) If a distribution under the plan is made to any employee and if any portion of such distribution is an amount described in section 72(m) (5) (A) (i), contributions to be made on behalf of such employee for the 5 taxable years succeeding the taxable year in which such distribution is made.

Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e) (1)) by reason of the application of subsection (e) (3).

(6) Except as provided in this paragraph, the plan meets the requirements of subsection

(a) (4) without taking into account for any purpose contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, as amended, or any other Federal or State law. If—

(A) Of the contributions deductible under section 404 (determined without regard to section 404(a) (10)), not more than one-third is deductible by reason of contributions by the employer on behalf of owner-employees, and

(B) Taxes paid by the owner-employees under chapter 2 (relating to tax on self-employment income), and the taxes which would be payable under such chapter 2 by the owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees,

then taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of subsection (a) (4), be taken into account as contributions by the employer for such employee under the plan.

(7) Under the plan, if an owner-employee dies before his entire interest has been distributed to him, or if distribution has been commenced in accordance with subsection (a) (9) (B) to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse, his entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of his surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall not apply if distribution of the interest of an owner-employee has commenced and such distribution is for a term certain over a period permitted under subsection (a) (9) (B) (ii).

(8) Under the plan—

(A) Any contribution which is an excess contribution, together with the income attributable to such excess contribution, is (unless subsection (e) (2) (E) applies) to be repaid to the owner-employee on whose behalf such excess contribution is made;

(B) If for any taxable year the plan does not, by reason of subsection (e) (2) (A), meet (for purposes of section 404) the requirements of this subsection with respect to an owner-employee, the income for the taxable year attributable to the interest of such owner-employee under the plan is to be paid to such owner-employee; and

(C) The entire interest of an owner-employee is to be repaid to him when required by the provisions of subsection (e) (2) (E).

(9) (A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a

trade or business if such owner-employee, or such two or more owner-employees together—

- (i) Own the entire interest in an unincorporated trade or business, or
- (ii) In the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

(10) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (9)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(11) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

(e) *Excess contributions on behalf of owner-employees*—(1) *Excess contribution defined.* For purposes of this section, the term "excess contribution" means, except as provided in paragraph (3)—

(A) If, in the taxable year, contributions are made under the plan only on behalf of owner-employees, the amount of any contribution made on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 (determined without regard to section 404(a)(10)) for the taxable year; or

(B) If, in the taxable year, contributions are made under the plan on behalf of employees other than owner-employees—

(i) The amount of any contribution made by the employer on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 (determined without regard to section 404(a)(10)) for the taxable year;

(ii) The amount of any contribution made by any owner-employee (as an employee) at a rate which exceeds the rate of contributions permitted to be made by employees other than owner-employees;

(iii) The amount of any contribution made by any owner-employee (as an employee) which exceeds the lesser of \$2,500 or 10 percent of the earned income for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established; and

(iv) In the case of any individual on whose behalf contributions are made under more than one plan as an owner-employee, the amount of any contribution made by such owner-employee (as an employee) under all such plans which exceeds \$2,500; and

(C) The amount of any contribution made on behalf of an owner-employee in any taxable year for which, under paragraph (2) (A) or (E), the plan does not (for purposes of section 404) meet the requirements of subsection (d) with respect to such owner-employee.

For purposes of this subsection, the amount of any contribution which is allocable (de-

termined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

(2) *Effect of excess contribution*—(A) *In general.* If an excess contribution (other than an excess contribution to which subparagraph (E) applies) is made on behalf of an owner-employee in any taxable year, the plan with respect to which such excess contribution is made shall, except as provided in subparagraphs (C) and (D), be considered, for purposes of section 404, as not meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year and for all succeeding taxable years.

(B) *Inclusion of amounts in gross income of owner-employees.* For any taxable year for which any plan does not meet the requirements of subsection (d) with respect to an owner-employee by reason of subparagraph (A), the gross income of such owner-employee shall, for purposes of this chapter, include the amount of net income for such taxable year attributable to the interest of such owner-employee under such plan.

(C) *Repayment within prescribed period.* Subparagraph (A) shall not apply to an excess contribution with respect to any taxable year, if, on or before the close of the 6-month period beginning on the day on which the Secretary or his delegate sends notice (by certified or registered mail) to the person to whom such excess contribution was paid of the amount of such excess contribution, the amount of such excess contribution, and the net income attributable thereto, is repaid to the owner-employee on whose behalf such excess contribution was made. If the excess contribution is an excess contribution as defined in paragraph (1) (A) or (B)(i), or is an excess contribution as defined in paragraph (1)(C) with respect to which a deduction has been claimed under section 404, the notice required by the preceding sentence shall not be mailed prior to the time that the amount of the tax under this chapter of such owner-employee for the taxable year in which such excess contribution was made has been finally determined.

(D) *Repayment after prescribed period.* If an excess contribution, together with the net income attributable thereto, is not repaid within the 6-month period referred to in subparagraph (C), subparagraph (A) shall not apply to an excess contribution with respect to any taxable year beginning with the taxable year in which the person to whom such excess contribution was paid repays the amount of such excess contribution to the owner-employee on whose behalf such excess contribution was made, and pays to such owner-employee the amount of net income attributable to the interest of such owner-employee which, under subparagraph (B), has been included in the gross income of such owner-employee for any prior taxable year.

(E) *Special rule if excess contribution was willfully made.* If an excess contribution made on behalf of an owner-employee is determined to have been willfully made, then—

(1) Subparagraphs (A), (B), (C), and (D) shall not apply with respect to such excess contribution;

(ii) There shall be distributed to the owner-employee on whose behalf such excess contribution was willfully made his entire interest in all plans with respect to which he is an owner-employee; and

(iii) No plan shall, for purposes of section 404, be considered as meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year in which it is determined that such excess

contribution was willfully made and for the 5 taxable years following such taxable year. (F) *Statute of limitations.* In any case in which subparagraph (A) applies, the period for assessing any deficiency arising by reason of—

(1) The disallowance of any deduction under section 404 on account of a plan not meeting the requirements of subsection (d) with respect to the owner-employee on whose behalf an excess contribution was made, or

(ii) The inclusion, under subparagraph (B), in gross income of such owner-employee of income attributable to the interest of such owner-employee under a plan,

for the taxable year in which such excess contribution was made or for any succeeding taxable year shall not expire prior to one year after the close of the 6-month period referred to in subparagraph (C).

(3) *Contributions for premiums on annuity, etc., contracts.* A contribution by the employer on behalf of an owner-employee shall not be considered to be an excess contribution within the meaning of paragraph (1), if—

(A) Under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

(B) The amount of such contribution exceeds the amount deductible under section 404 (determined without regard to section 404(a)(10)) with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

(C) The amount of such contribution does not exceed the average of the amounts which were deductible under section 404 (determined without regard to section 404(a)(10)) with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible under such section if such section had been in effect) for the first 3 taxable years (i) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan and (ii) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in subparagraph (A) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence shall not apply if the amount of such contributions under all such plans for such taxable year exceeds \$2,500. Any contribution which is not considered to be an excess contribution by reason of the application of this paragraph shall, for purposes of subparagraphs (B) (ii), (iii), and (iv) of paragraph (1), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 (determined without regard to section 404(a)(10)) for the taxable year, but only for the purpose of applying such subparagraphs to other contributions made by such owner-employee as an employee.

(f) *Certain custodial accounts*—(1) *Treatment as qualified trust.* For purposes of this title, a custodial account shall be treated as a qualified trust under this section, if—

(A) Such custodial account would, except for the fact that it is not a trust, constitute a qualified trust under this section;

(B) The custodian is a bank (as defined in subsection (d) (1));

(C) The investment of the funds in such account (including all earnings) is to be made—

(i) Solely in regulated investment company stock with respect to which an employee is the beneficial owner, or

(ii) Solely in annuity, endowment, or life insurance contracts issued by an insurance company;

(D) The shareholder of record of any such stock described in subparagraph (C) (i) is the custodian or its nominee; and

(E) The contracts described in subparagraph (C) (ii) are held by the custodian until distributed under the plan.

For purposes of this title, in the case of a custodial account treated as a qualified trust under this section by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(2) *Definition.* For purposes of paragraph (1), the term "regulated investment company" means a domestic corporation which—

(A) Is a regulated investment company within the meaning of section 851(a), and

(B) Issues only redeemable stock.

(g) *Annuity defined.* For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) *Cross reference.* For exemption from tax of a trust qualified under this section, see section 501(a).

[Sec. 401 as amended by sec. 2, Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 809)]

PAR. 2. Section 1.401-1 is amended by revising paragraph (a) (1), by revising subdivisions (iii), (v), and (vi) of paragraph (a) (3), by adding new subdivisions (vii), (viii), and (ix) to paragraph (a) (3), by adding a new subparagraph (4) to paragraph (a), and by revising paragraph (b) (1) (i) and (2). These amended and added provisions read as follows:

§ 1.401-1 Qualified pension, profit-sharing, and stock bonus plans.

(a) *Introduction.* (1) Sections 401 through 405 relate to pension, profit-sharing, stock bonus, and annuity plans, compensation paid under a deferred-payment plan, and bond purchase plans. Section 401(a) prescribes the requirements which must be met for qualification of a trust forming part of a pension, profit-sharing, or stock bonus plan.

(3) * * *

(iii) It must be formed or availed of for the purpose of distributing to the employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with the plan, and, in the case of a plan which covers (as defined in paragraph (a) (2) of § 1.401-10) any self-employed individual, the time and method of such distribution must satisfy the requirements

of section 401(a) (9) with respect to each employee covered by the plan (see paragraph (f) of § 1.401-11);

(v) It must be part of a plan which benefits prescribed percentages of the employees, or which benefits such employees as qualify under a classification set up by the employer and found by the Commissioner not to be discriminatory in favor of certain specified classes of employees (see § 1.401-3 and, in addition, see § 1.401-12 for special rules as to plans covering owner-employees);

(vi) It must be part of a plan under which contributions or benefits do not discriminate in favor of certain specified classes of employees (see § 1.401-4);

(vii) It must be part of a plan which provides the nonforfeitable rights described in section 401(a) (7) (see § 1.401-6);

(viii) If the trust forms part of a pension plan, the plan must provide that forfeitures must not be applied to increase the benefits any employee would receive under such plan (see § 1.401-7);

(ix) It must, if the plan benefits any self-employed individual who is an owner-employee, satisfy the additional requirements for qualification contained in section 401(a) (10) and (d).

(4) For taxable years beginning after December 31, 1962, self-employed individuals may be included in qualified plans. See §§ 1.401-10 through 1.401-13.

(b) *General rules.* (1) (i) A pension plan within the meaning of section 401(a) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement. Retirement benefits generally are measured by, and based on, such factors as years of service and compensation received by the employees. The determination of the amount of retirement benefits and the contributions to provide such benefits are not dependent upon profits. Benefits are not definitely determinable if funds arising from forfeitures on termination of service, or any other reason, may be used to provide increased benefits for the remaining participants (see § 1.401-7, relating to the treatment of forfeitures under a qualified pension plan). A plan designed to provide benefits for employees or their beneficiaries to be paid upon retirement or over a period of years after retirement will, for the purposes of section 401(a), be considered a pension plan if the employer contributions under the plan can be determined actuarially on the basis of definitely determinable benefits, or, as in the case of money purchase pension plans, such contributions are fixed without being geared to profits. A pension plan may provide for the payment of a pension due to disability and may also provide for the payment of incidental death benefits through insurance or otherwise. However, except as provided in section 401(h) and the regulations thereunder, a pension plan may not provide for the payment of benefits not customarily included in such a plan such as layoff benefits or

benefits for sickness, accident, hospitalization, or medical expenses.

(2) The term "plan" implies a permanent as distinguished from a temporary program. Thus, although the employer may reserve the right to change or terminate the plan, and to discontinue contributions thereunder, the abandonment of the plan for any reason other than business necessity within a few years after it has taken effect will be evidence that the plan from its inception was not a bona fide program for the exclusive benefit of employees in general. Especially will this be true if, for example, a pension plan is abandoned soon after pensions have been fully funded for persons in favor of whom discrimination is prohibited under section 401(a). The permanency of the plan will be indicated by all of the surrounding facts and circumstances, including the likelihood of the employer's ability to continue contributions as provided under the plan. In the case of a profit-sharing plan, other than a profit-sharing plan which covers employees and owner-employees (see section 401(d) (2) (B)), it is not necessary that the employer contribute every year or that he contribute the same amount or contribute in accordance with the same ratio every year. However, merely making a single or occasional contribution out of profits for employees does not establish a plan of profit-sharing. To be a profit-sharing plan, there must be recurring and substantial contributions out of profits for the employees. In the event a plan is abandoned, the employer should promptly notify the district director, stating the circumstances which led to the discontinuance of the plan.

PAR. 3. Section 1.401-3 is amended by revising paragraph (a) and by adding a new subparagraph (5) to paragraph (e). These amended and added provisions read as follows:

§ 1.401-3 Requirements as to coverage.

(a) (1) In order to insure that stock bonus, pension, and profit-sharing plans are utilized for the welfare of employees in general, and to prevent the trust device from being used for the principal benefit of shareholders, officers, persons whose principal duties consist in supervising the work of other employees, or highly paid employees, or as a means of tax avoidance, a trust will not be qualified unless it is part of a plan which satisfies the coverage requirements of section 401(a) (3). However, if the plan covers any individual who is an owner-employee, as defined in section 401(c) (3), the requirements of section 401(a) (3) and this section are not applicable to such plan, but the plan must satisfy the requirements of section 401(d) (see § 1.401-12).

(2) The percentage requirements in section 401(a) (3) (A) refer to a percentage of all the active employees, including employees temporarily on leave, such as those in the Armed Forces of the United States, if such employees are eligible under the plan.

(3) The application of section 401(a)(3)(A) may be illustrated by the following example:

Example. A corporation adopts a plan at a time when it has 1,000 employees. The plan provides that all full-time employees who have been employed for a period of two years and have reached the age of 30 shall be eligible to participate. The plan also requires participating employees to contribute 3 percent of their monthly pay. At the time the plan is made effective 100 of the 1,000 employees had not been employed for a period of two years. Fifty of the employees were seasonal employees whose customary employment did not exceed five months in any calendar year. Twenty-five of the employees were part-time employees whose customary employment did not exceed 20 hours in any one week. One hundred and fifty of the full-time employees who had been employed for two years or more had not yet reached age 30. The requirements of section 401(a)(3)(A) will be met if 540 employees are covered by the plan, as shown by the following computation:

(i) Total employees with respect to whom the percentage requirements are applicable (1,000 minus 175 (100 plus 50 plus 25))	825
(ii) Employees not eligible to participate because of age requirements	150
(iii) Total employees eligible to participate	675
(iv) Percentage of employees in item (i) eligible to participate	81+
(v) Minimum number of participating employees to qualify the plan (80 percent of 675)	540

If only 70 percent, or 578, of the 825 employees satisfied the age and service requirements, then 462 (80 percent of 578) participating employees would satisfy the percentage requirements.

* * * *

(5) If a plan provides contributions or benefits for a self-employed individual, the rules relating to the integration of such a plan with the contributions or benefits under the Social Security Act are set forth in paragraph (c) of § 1.401-11 and paragraph (h) of § 1.401-12.

PAR. 4. Section 1.401-4 is amended by revising paragraph (a) (1)(iii) and (2)(i) and paragraph (c) thereof. These amended provisions read as follows:

§ 1.401-4 Discrimination as to contributions or benefits.

(a) (1) * * *

(iii) Funds in a stock bonus or profit-sharing plan arising from forfeitures on termination of service, or other reason, must not be allocated to the remaining participants in such a manner as will effect the prohibited discrimination. With respect to forfeitures in a pension plan, see § 1.401-7.

(2) (i) Section 401(a)(5) sets out certain provisions which will not in and of themselves be discriminatory within the meaning of section 401(a)(3) or (4). See § 1.401-3. Thus, a plan will not be considered discriminatory merely because the contributions or benefits bear a uniform relationship to total compensation or to the basic or regular rate of compensation, or merely because

the contributions or benefits based on that part of the annual compensation of employees which is subject to the Federal Insurance Contributions Act (chapter 21 of the Code) differ from the contributions or benefits based on any excess of such annual compensation over such part. With regard to the application of the rules of section 401(a)(5) in the case of a plan which benefits a self-employed individual, see paragraph (c) of § 1.401-11.

(c) (1) Although a qualified plan may provide for termination at will by the employer or discontinuance of contributions thereunder, this will not of itself prevent a trust from being a qualified trust. However, a qualified pension plan must expressly incorporate provisions which comply with the restrictions contained in subparagraph (2) of this paragraph at the time the plan is established, unless the Commissioner determines that such provisions are not necessary to prevent the prohibited discrimination that may occur in the event of any early termination of the plan. Although these provisions are the only provisions required to be incorporated in the plan to prevent the discrimination that may arise because of an early termination of the plan, the plan may in operation result in the discrimination prohibited by section 401(a)(4), unless other provisions are later incorporated in the plan. However, provisions to comply with the restrictions in subparagraph (2) of this paragraph need not be incorporated in a plan covering a self-employed individual, if it is reasonably certain at the inception of the plan that such restrictions would not affect the amount of contributions which may be used for the benefit of any employee.

(2) (i) If employer contributions under a qualified pension plan may be used for the benefit of an employee who is among the 25 highest paid employees of the employer at the time the plan is established and whose anticipated annual pension under the plan exceeds \$1,500, such plan must provide that upon the occurrence of the conditions described in subdivision (ii) of this subparagraph, the employer contributions which are used for the benefit of any such employee are restricted in accordance with subdivision (iii) of this subparagraph.

(ii) The restrictions described in subdivision (iii) of this subparagraph become applicable if—

(a) The plan is terminated within 10 years after its establishment,

(b) The benefits of an employee described in subdivision (i) of this subparagraph become payable within 10 years after the establishment of the plan, or

(c) The benefits of an employee described in subdivision (i) of this subparagraph become payable after the plan has been in effect for 10 years, and the full current costs of the plan for the first 10 years have not been funded.

In the case of an employee described in (b) of this subdivision, the restrictions will remain applicable until the plan has been in effect for 10 years, but if at that

time the full current costs have been funded the restrictions will no longer apply to the benefits payable to such an employee. In the case of an employee described in (b) or (c) of this subdivision, if at the end of the first 10 years the full current costs are not met, the restrictions will continue to apply until the full current costs are funded for the first time.

(iii) The restrictions required under subdivision (i) of this subparagraph must provide that the employer contributions which may be used for the benefit of an employee described in such subdivision shall not exceed the greater of \$20,000, or 20 percent of the first \$50,000 of compensation of such employee multiplied by the number of years between the date of the establishment of the plan and—

(a) The date of the termination of the plan,

(b) In the case of an employee described in subdivision (ii)(b) of this subparagraph, the date the benefit of the employee becomes payable, if before the date of the termination of the plan, or

(c) In the case of an employee described in subdivision (ii)(c) of this subparagraph, the date of the failure to meet the full current costs of the plan.

However, if the full current costs of the plan have not been met on the date described in (a) or (b) of this subdivision, whichever is applicable, then the date of the failure to meet such full current costs shall be substituted for the date referred to in (a) or (b) of this subdivision. For purposes of determining the contributions which may be used for the benefit of an employee when (b) of this subdivision applies, the number of years taken into account may be recomputed for each year if the full current costs of the plan are met for such year.

(iv) For purposes of this subparagraph, the employer contributions which, at a given time, may be used for the benefits of an employee include any unallocated funds which would be used for his benefits if the plan were then terminated or the employee were then to withdraw from the plan, as well as all contributions allocated up to that time exclusively for his benefits.

(v) The provisions of this subparagraph apply to a former or retired employee of the employer, as well as to an employee still in the employer's service.

(vi) The following terms are defined for purposes of this subparagraph—

(a) The term "benefits" includes any periodic income, any withdrawal values payable to a living employee, and the cost of any death benefits which may be payable after retirement on behalf of an employee, but does not include the cost of any death benefits with respect to an employee before retirement nor the amount of any death benefits actually payable after the death of an employee whether such death occurs before or after retirement.

(b) The term "full current costs" means the normal cost, as defined in § 1.404(a)-6, for all years since the effective date of the plan, plus interest on any unfunded liability during such period.

(c) The term "annual compensation" of an employee means either such employee's average regular annual compensation, or such average compensation over the last five years, or such employee's last annual compensation if such compensation is reasonably similar to his average regular annual compensation for the five preceding years.

(3) The amount of the employer contributions which can be used for the benefit of a restricted employee may be limited either by limiting the annual amount of the employer contributions for the designated employee during the period affected by the limitation, or by limiting the amount of funds under the plan which can be used for the benefit of such employee, regardless of the amount of employer contributions.

(4) The restrictions contained in subparagraph (2) of this paragraph may be exceeded for the purpose of making current retirement income benefit payments to retired employees who would otherwise be subject to such restrictions, if—

(i) The employer contributions which may be used for any such employee in accordance with the restrictions contained in subparagraph (2) of this paragraph are applied to provide level amounts of annuity in the basic form provided for under the plan for such employee at retirement (or, if he has already retired, beginning immediately);

(ii) The annuity thus provided is supplemented, to the extent necessary to provide the full retirement income benefits in the basic form called for under the plan, by current payments to such employee as such benefits come due; and

(iii) Such supplemental payments are made at any time only if the full current costs of the plan have then been met, or the aggregate of such supplemental payments for all such employees does not exceed the aggregate employer contributions already made under the plan in the year then current.

If disability income benefits are provided under the plan, the plan may contain like provisions with respect to the current payment of such benefits.

(5) If a plan has been changed so as to increase substantially the extent of possible discrimination as to contributions and as to benefits actually payable in event of subsequent termination, such change will be considered as the establishment of a new plan, and the requirements of this paragraph are accordingly applicable by substituting the date of such change for the date of establishment.

(6) This paragraph shall apply to taxable years of a qualified plan commencing after the date of the publication of this paragraph in the FEDERAL REGISTER as a Treasury decision. In the case of an early termination of a qualified pension plan during any such taxable year, the employer contributions which may be used for the benefit of any employee must conform to the requirements of this paragraph. However, any pension plan which is qualified on the date of the publication of this paragraph of the regulations in the FEDERAL REGISTER as a Treasury decision will not be disqualified merely because it does not ex-

pressly include the provisions prescribed by this paragraph.

PAR. 5. There are inserted immediately after § 1.401-5, the following new sections:

§ 1.401-6 Termination of a qualified plan.

(a) *General rules.* (1) In order for a pension, profit-sharing, or stock bonus trust to satisfy the requirements of section 401, the plan of which such trust forms a part must expressly provide that, upon the termination of the plan or upon the complete discontinuance of contributions under the plan, the rights of each employee to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the rights of each employee to the amounts credited to his account at such time, are nonforfeitable. As to what constitutes nonforfeitable rights of an employee, see paragraph (a) (2) of § 1.402(b)-1.

(2) (i) A qualified plan must also provide for the allocation of any previously unallocated funds to the employees covered by the plan upon the termination of the plan or the complete discontinuance of contributions under the plan. Such provision may be incorporated in the plan at its inception or by an amendment made prior to the termination of the plan or the discontinuance of contributions thereunder.

(ii) Any provision for the allocation of unallocated funds is acceptable if it specifies the method to be used and does not conflict with the provisions of section 401(a)(4) and the regulations thereunder. The allocation of unallocated funds may be in cash or in the form of other benefits provided under the plan. However, the allocation of the funds contributed by the employer among the employees need not necessarily benefit all the employees covered by the plan. For example, an allocation may be satisfactory if priority is given to benefits for employees over the age of 50 at the time of the termination of the plan, or those who then have at least 10 years of service, if there is no possibility of discrimination in favor of employees who are officers, shareholders, employees whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(b) *Termination defined.* (1) Whether a plan is terminated is generally a question to be determined with regard to all the facts and circumstances in a particular case. For example, a plan is terminated when, in connection with winding up his trade or business, the employer begins to discharge his employees. However, a plan is not terminated, for example, merely because an employer consolidates or replaces that plan with a comparable plan. Similarly, a plan is not terminated merely because the employer sells or otherwise disposes of his trade or business if the acquiring employer continues the plan as a separate and distinct plan of its own, or consolidates or replaces that plan with a comparable plan. See paragraph (d) (4) of § 1.381(c)(11)-1 for the definition of comparable plan.

(2) For purposes of this section, the term "termination" includes both a partial termination and a complete termination of a plan. A partial termination of a qualified plan occurs when a readily identifiable group of employees who have been covered by the plan are subsequently excluded from such coverage. Thus, for example, if an employer has a plan covering the employees in three factories, but amends the plan so that employees in only two factories are covered, the plan is terminated with respect to the employees in the third factory. Whether or not a part of a plan is terminated when benefits or employer contributions are reduced, or the eligibility or vesting requirements under the plan are made less liberal, will be determined on the basis of all the facts and circumstances.

(c) *Complete discontinuance defined.* (1) For purposes of this section, a complete discontinuance of contributions under the plan is contrasted with a suspension of contributions under the plan, which is merely a temporary cessation of contributions by the employer. A complete discontinuance of contributions may occur although some amounts are contributed by the employer under the plan if such amounts are not substantial enough to reflect the intent on the part of the employer to continue to maintain the plan. The determination of whether a complete discontinuance of contributions under the plan has occurred will be made with regard to all the facts and circumstances in the particular case, and without regard to the amount of any contributions made under the plan by employees.

(2) In the case of a pension plan, a suspension of contributions will not constitute a discontinuance if—

(i) The benefits to be paid or made available under the plan are not affected at any time by the suspension, and

(ii) The unfunded past service cost at any time (which includes the unfunded prior normal cost and unfunded interest on any unfunded cost) does not exceed the unfunded past service cost as of the date of establishment of the plan, plus any additional past service or supplemental costs added by amendment.

(3) In any case in which a suspension of a profit-sharing plan is considered a discontinuance, the discontinuance becomes effective not later than the last day of the taxable year of the employer following the last taxable year of such employer for which a substantial contribution was made under the profit-sharing plan.

(d) *Contributions or benefits which remain forfeitable.* The provisions of this section do not apply to amounts which are reallocated to prevent the discrimination prohibited by section 401(a)(4) (see paragraph (c) of § 1.401-4).

(e) *Effective date.* This section shall apply to taxable years of a qualified plan commencing after the date of the publication of this section of the regulations in the FEDERAL REGISTER as a Treasury decision. In the case of the termination or complete discontinuance (as defined in this section) of any qualified plan during any such taxable year, the rights accorded to each employee covered under

the plan must conform to the requirements of this section. However, a plan which is qualified on the date of the publication of this section of the regulations in the FEDERAL REGISTER as a Treasury decision will not be disqualified merely because it does not expressly include the provisions prescribed by this section.

§ 1.401-7 Forfeitures under a qualified pension plan.

(a) *General rules.* In the case of a trust forming a part of a qualified pension plan, the plan must expressly provide that forfeitures arising from severance of employment, death, or for any other reason, must not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions thereunder. The amounts so forfeited must be used as soon as possible to reduce the employer's contributions under the plan. However, a qualified pension plan may anticipate the effect of forfeitures in determining the costs under the plan. Furthermore, a qualified plan will not be disqualified merely because a determination of the amount of forfeitures under the plan is made only once during each taxable year of the employer.

(b) *Examples.* The rules of paragraph (a) of this section may be illustrated by the following examples:

Example (1). The A Employees' Trust forms a part of a money-purchase pension plan which provides that forfeitures in an amount not in excess of one percent of the employer's contributions, arising from termination of employment, shall be reallocated to the accounts of remaining participants. Such a trust does not constitute a qualified trust under section 401(a).

Example (2). The B Company Pension Trust forms a part of a pension plan which is funded by individual level annual premium annuity contracts. The plan requires ten years of service prior to obtaining a vested right to benefits under the plan. One of the company's employees resigns his position after two years of service. The insurance company paid to the trustees the cash surrender value of the contract—\$750. The B Company must reduce its next contribution to the pension trust by this amount.

Example (3). The C Corporation's trust pension plan has been in existence for 20 years. It is funded by individual contracts issued by an insurance company, and the premiums thereunder are paid annually. Under such plan, the annual premium accrued for the year 1966 is due and is paid on January 2, 1966, and on July 1 of the same year the plan is terminated due to the liquidation of the employer. Some forfeitures were incurred and collected by the trustee with respect to those participants whose employment terminated between January 2 and July 1. The plan provides that the amount of such forfeitures is to be applied to provide additional annuity benefits for the remaining employees covered by the plan. The pension plan of the C Corporation satisfies the provisions of section 401(a)(8). Although forfeitures are used to increase benefits in this case, this use of forfeitures is permissible since no further contributions will be made under the plan.

(c) *Effective date.* This section applies to taxable years of a qualified plan commencing after the date of the publication of this section of the regulations

in the FEDERAL REGISTER as a Treasury decision. However, a plan which is qualified on the date of the publication of this section in the FEDERAL REGISTER as a Treasury decision will not be disqualified merely because it does not expressly include the provisions prescribed by this section.

§ 1.401-8 Custodial accounts.

(a) *Treatment of a custodial account as a qualified trust.* For taxable years of a plan beginning after December 31, 1962, a custodial account may be used, in lieu of a trust, under any pension, profit-sharing, or stock bonus plan, described in section 401 if the requirements of paragraph (b) of this section are met. A custodial account may be used under such a plan, whether the plan covers common-law employees, self-employed individuals who are treated as employees by reason of section 401(c), or both. The use of a custodial account as part of a plan does not preclude the use of a trust or another custodial account as part of the same plan. A plan under which a custodial account is used may be considered in connection with other plans of the employer in determining whether the requirements of section 401 are satisfied.

(b) *Rules applicable to custodial accounts.* (1) A custodial account shall be treated for taxable years beginning after December 31, 1962, as a qualified trust under section 401 if such account meets the following requirements described in subdivisions (i) through (iii) of this subparagraph:

(i) The custodial account must satisfy all the requirements of section 401 that are applicable to qualified trusts. See subparagraph (2) of this paragraph.

(ii) The custodian of the custodial account must be a bank.

(iii) The custodial agreement provides that the investment of the funds in the account is to be made—

(a) Solely in stock of a regulated investment company which is registered in the name of the custodian or its nominee and with respect to which an employee who is covered by the plan is the beneficial owner, or

(b) Solely in annuity, endowment, or life insurance contracts, issued by an insurance company and held by the custodian until distributed pursuant to the terms of the plan.

See subparagraphs (3) and (4) of this paragraph.

(2) As a result of the requirement described in subparagraph (1)(i) of this paragraph (relating to the requirements applicable to qualified trusts), the custodial account must, for example, be created pursuant to a written agreement which constitutes a valid contract under local law. In addition, the terms of the contract must make it impossible, prior to the satisfaction of all liabilities with respect to the employees and their beneficiaries covered by the plan, for any part of the funds of the custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of the employees or their beneficiaries as provided for in the plan (see paragraph (a) of § 1.401-2).

(3) The requirement described in subparagraph (1)(iii) of this paragraph, relating to the investment of the funds of the plan, applies, for example, to the employer contributions under the plan, any employee contributions under the plan, and any earnings on such contributions. Such requirement also applies to capital gains realized upon the sale of stock described in (a) of such subdivision, to any capital gain dividends received in connection with such stock, and to any refunds described in section 852(b)(3)(D)(ii) (relating to undistributed capital gains of a regulated investment company) which is received in connection with such stock. However, since such requirement relates only to the investment of the funds of the plan, the custodian may deposit funds with a bank, in either a checking or savings account, while accumulating sufficient funds to make additional investments or while awaiting an appropriate time to make additional investments.

(4) The requirement in subparagraph (1)(iii)(a) of this paragraph that an employee covered by the plan be the beneficial owner of the stock does not mean that the employee who is the beneficial owner must have a nonforfeitable interest in the stock. Thus, a plan may provide for forfeitures of an employee's interest in such stock in the same manner as plans which use a trust. In the event of a forfeiture of an employee's beneficial ownership in the stock of a regulated investment company, the beneficial ownership of such stock must pass to another employee covered by the plan.

(c) *Effects of qualification.* (1) Any custodial account which satisfies the requirements of section 401(f) shall be treated as a qualified trust for all purposes of the Internal Revenue Code of 1954. Accordingly, such a custodial account shall be treated as a separate legal person which is exempt from the income tax by section 501(a). On the other hand, such a custodial account is required to file the returns described in sections 6033 and 6047 and to supply any other information which a qualified trust is required to furnish.

(2) In determining whether the funds of a custodial account are distributed or made available to an employee or his beneficiary, the rules which under section 402(a) are applicable to trusts will also apply to the custodial account as though it were a separate legal person and not an agent of the employee.

(d) *Effect of loss of qualification.* If a custodial account which has qualified under section 401 fails to qualify under such section for any taxable year, such custodial account will not thereafter be treated as a separate legal person, and the funds in such account shall be treated as made available within the meaning of section 402(a)(1) to the employees for whom they are held.

(e) *Definitions.* For purposes of this section—

(1) The term "bank" means a bank as defined in section 401(d)(1).

(2) The term "regulated investment company" means any domestic corporation which issues only redeemable stock and is a regulated investment company within the meaning of section 851(a)

(including the limitations of section 851(b)). See § 1.851-1.

§ 1.401-9 Face-amount certificates—nontransferable annuity contracts.

(a) *Face-amount certificates treated as annuity contracts.* Section 401(g) provides that a face-amount certificate (as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C. sec. 80a-2)) which is not transferable within the meaning of paragraph (b)(3) of this section shall be treated as an annuity contract for purposes of sections 401 through 404 for any taxable year of a plan subject to such sections beginning after December 31, 1962. Accordingly, there may be established for any such taxable year a qualified plan under which such face-amount certificates are purchased for the participating employees without the creation of a trust or custodial account. However, for such a plan to qualify, the plan must satisfy all the requirements applicable to a qualified annuity plan (see section 403(a) and the regulations thereunder).

(b) *Nontransferability of face-amount certificates and annuity contracts.* (1)

(i) Section 401(g) provides that, in order for any face-amount certificate, or any other contract issued after December 31, 1962, to be subject to any provision under sections 401 through 404 which is applicable to annuity contracts, as compared to other forms of investment, such certificate or contract must be nontransferable at any time when it is held by any person other than the trustee of a trust described in section 401(a) and exempt under section 501(a). Thus, for example, in order for a group retirement income contract to be treated as an annuity contract, if such contract is not held by the trustee of an exempt employees' trust, it must satisfy the requirements of this section. Furthermore, a face-amount certificate or an annuity contract will be subject to the tax treatment under section 403(b) only if it satisfies the requirements of section 401(g) and this section. Any certificate or contract in order to satisfy the provisions of this section must expressly contain the provisions that are necessary to make such certificate or contract not transferable within the meaning of this paragraph.

(ii) In the case of any group contract purchased by an employer under a plan to which sections 401 through 404 apply, the restriction on transferability required by section 401(g) and this section applies to the interest of the employee participants under such group contract but not to the interest of the employer under such contract.

(2) If an employee receives a nontransferable annuity contract from the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a), then, under paragraph (a)(2) of § 1.402-1, the cash surrender value of such contract is not considered income to the employee unless and until such contract is surrendered.

(3) A face-amount certificate or an annuity contract is transferable if the owner can transfer any portion of his

interest in the certificate or contract to any person other than the issuer thereof. Accordingly, such a certificate or contract is transferable if the owner can sell, assign, discount, or pledge as collateral for a loan or as security for the performance of an obligation or for any other purpose his interest in the certificate or contract to any person other than the issuer thereof. On the other hand, for purposes of section 401(g), a face-amount certificate or annuity contract is not considered to be transferable merely because such certificate or contract, or the plan of which it is a part, contains a provision permitting the employee to designate a beneficiary to receive the proceeds of the certificate or contract in the event of his death, or contains a provision permitting the employee to elect to receive a joint and survivor annuity, or contains other similar provisions.

(4) A material modification in the terms of an annuity contract constitutes the issuance of a new contract regardless of the manner in which it is made.

(c) *Examples.* The rules of this section may be illustrated by the following examples:

Example (1). The P Employees' Annuity Plan is a nontrustered plan which is funded by individual annuity contracts issued by the Y Insurance Company. Each annuity contract issued by such company after December 31, 1962, provides, on its face, that it is "NOT TRANSFERABLE". The terms of each such contract further provide that, "This contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose, to any person other than this company." The annuity contracts of the P Employees' Annuity Plan satisfy the requirements of section 401(g) and this section.

Example (2). The R Company Pension Trust forms a part of a pension plan which is funded by individual level-premium annuity contracts. Such contracts are purchased by the trustees of the R Pension Trust from the Y Insurance Company. The trustee of the R Company Pension Trust is the legal owner of each such contract at all times prior to the distribution of such contract to a qualifying annuitant. The trustee purchases such a contract on January 3, 1963, in the name of an employee who qualifies on that date for coverage under the plan. The contract states, on its face, "TRANSFERABILITY RESTRICTED". The terms of the annuity contract contain the provisions described in the preceding example and, in addition, provide that such provision does not apply to any trustee of the R Company Pension Trust. The annuity contract purchased by the trustee of the R Company Pension Trust satisfies the requirements of section 401(g) and this section.

Example (3). A is the trustee of the X Corporation's Employees' Pension Trust. The trust forms a part of a pension plan which is funded by individual level premium annuity contracts. The trustee is the legal owner of such contracts, but the employees covered under the plan obtain beneficial interests in such contracts after ten years of service with the X Corporation. On January 15, 1980, A distributes to D an annuity contract issued to A in D's name on June 25, 1959, and distributes to E an annuity contract issued to A in E's name on September 30, 1963. The contract issued to D need not be nontransferable, but the contract issued to E must be nontransferable in order to satisfy the requirements of section 401(g) and this section.

Example (4). The corpus of the Y Corporation's Employees' Pension Plan consists of individual insurance contracts in the names of the covered employees and an auxiliary fund which is used to convert such policies to annuity contracts at the time a beneficiary of such trust retires. F retires on June 15, 1963, and the trustee converts the individual insurance contract on F's life to a life annuity which is distributed to him. The life annuity issued on F's life must be nontransferable in order to satisfy the requirements of section 401(g) and this section.

§ 1.401-10 Definitions relating to plans covering self-employed individuals.

(a) *In general.* (1) Certain self-employed individuals may be covered by a qualified pension, annuity, or profit-sharing plan for taxable years beginning after December 31, 1962. This section contains definitions relating to plans covering self-employed individuals. The provisions of §§ 1.401-1 through 1.401-9, relating to requirements which are applicable to all qualified plans, are also generally applicable to any plan covering a self-employed individual. However, in addition to such requirements, any plan covering a self-employed individual is subject to the rules contained in §§ 1.401-11 through 1.401-13. Section 1.401-11 contains general rules which are applicable to any plan covering a self-employed individual who is an employee within the meaning of paragraph (b) of this section. Section 1.401-12 contains special rules which are applicable to plans covering self-employed individuals when one or more of such individuals is an owner-employee within the meaning of paragraph (d) of this section. Section 1.401-13 contains rules relating to excess contributions by, or for, an owner-employee. The provisions of this section and of §§ 1.401-11 through 1.401-13 are applicable to taxable years beginning after December 31, 1962.

(2) A self-employed individual is covered under a qualified plan during the period beginning with the date a contribution is first made by, or for, him under the qualified plan and ending when there are no longer funds under the plan which can be used to provide him or his beneficiaries with benefits.

(b) *Treatment of a self-employed individual as an employee.* (1) For purposes of section 401, a self-employed individual who receives earned income from an employer during a taxable year of such employer beginning after December 31, 1962, shall be considered an employee of such employer for such taxable year. Moreover, such an individual will be considered an employee for a taxable year if he would otherwise be treated as an employee but for the fact that the employer did not have net profits for that taxable year. Accordingly, the employer may cover such an individual under a qualified plan during years of the plan beginning with or within a taxable year of the employer beginning after December 31, 1962.

(2) If a self-employed individual is engaged in more than one trade or business, each such trade or business shall be considered a separate employer for purposes of applying the provisions of sections 401 through 404 to such indi-

vidual. Thus, if a qualified plan is established for one trade or business but not the others, the individual will be considered an employee only if he received earned income with respect to such trade or business and only the amount of such earned income derived from that trade or business shall be taken into account for purposes of the qualified plan.

(3)(i) An individual who is a common-law employee is not with respect to such employment an employee within the meaning of section 401(c)(1). Thus, for example, a minister who is a common-law employee is not a self-employed individual with respect to income attributable to such employment, even though such income constitutes net earnings from self-employment as defined in section 1402(a). Furthermore, a full-time life insurance salesman is considered a common-law employee for purposes of section 401 (see section 7701(a)(20)). The term "employee", for purposes of section 401, does not include a self-employed individual when the term "common-law" employee is used or when the context otherwise requires that the term "employee" does not include a self-employed individual.

(ii) An individual may be treated as an employee within the meaning of section 401(c)(1) of one employer even though such individual is also a common-law employee of another employer. For example, an attorney who is a common-law employee of a corporation and who, in the evenings maintains an office in which he practices law as a self-employed individual is an employee within the meaning of section 401(c)(1) with respect to the law practice. This example would not be altered by the fact that the corporation maintained a qualified plan under which the attorney is benefited as a common-law employee.

(4) For the purpose of determining whether an employee within the meaning of section 401(c)(1) satisfies the requirements for eligibility under a qualified plan established by an employer, such an employer may take into account past services rendered by such an employee both as a self-employed individual and as a common-law employee if past services rendered by other employees, including common-law employees, are similarly taken into account. However, an employer cannot take into account only past services rendered by employees within the meaning of section 401(c)(1) if past services rendered to such employer by individuals who are, or were, common-law employees are not taken into account. Past service as described in this subparagraph may be taken into account for the purpose of determining whether an individual who is, or was, an employee within the meaning of section 401(c)(1) satisfies the requirements for eligibility even if such service was rendered prior to January 1, 1963. On the other hand, past service cannot be taken into account for purposes of determining the contributions which may be made on such an individual's behalf under a qualified plan.

(c) *Definition of earned income*—(1) *General rule.* For purposes of section 401 and the regulations thereunder,

"earned income" means, in general, net earnings from self-employment (as defined in section 1402(a)) to the extent such net earnings constitute compensation for personal services actually rendered within the meaning of section 911(b).

(2) *Net earnings from self-employment.* (i) The computation of the net earnings from self-employment shall be made in accordance with the provisions of section 1402(a) and the regulations thereunder, with the modifications and exceptions described in subdivisions (ii) through (iv) of this subparagraph. Thus, an individual may have net earnings from self-employment, as defined in section 1402(a), even though such individual does not have self-employment income, as defined in section 1402(b), and, therefore, is not subject to the tax on self-employment income imposed by section 1401.

(ii) Items which are not included in gross income for purposes of chapter 1 of the Code and the deductions properly attributable to such items must be excluded from the computation of net earnings from self-employment even though the provisions of section 1402(a) specifically require the inclusion of such items. For example, if an individual is a resident of Puerto Rico, so much of his net earnings from self-employment as are excluded from gross income under section 933 must not be taken into account in computing his net earnings from self-employment which are earned income for purposes of section 401.

(iii) In computing net earnings from self-employment for the purpose of determining earned income, a self-employed individual may disregard only deductions for contributions made on his own behalf under a qualified plan. However, such computation must take into account the deduction allowed by section 404 or 405 for contributions under a qualified plan on behalf of the common-law employees of the trade or business.

(iv) For purposes of determining whether an individual has net earnings from self-employment and, thus, whether he is an employee within the meaning of section 401(c)(1), the exceptions in section 1402(c)(4) and (5) shall not apply. Thus, certain ministers, certain members of religious orders, doctors of medicine, and Christian Science practitioners are treated for purposes of section 401 as being engaged in a trade or business from which net earnings from self-employment are derived. In addition, the exceptions in section 1402(c)(2) shall not apply in the case of any individual who is treated as an employee under section 3121(d)(3)(A), (C), or (D). Therefore, such individuals are treated, for purposes of section 401, as being engaged in a trade or business from which net earnings from self-employment may be derived.

(3) *Compensation for personal services actually rendered.* (i) For purposes of section 401, the term "earned income" includes only that portion of an individual's net earnings from self-employment which constitutes earned income as defined in section 911(b) and the regulations thereunder. Thus, such term

includes only professional fees and other amounts received as compensation for personal services actually rendered by the individual. There is excluded from "earned income" the amount of any item of income, and any deduction properly attributable to such item, if such amount is not received as compensation for personal services actually rendered. Therefore, an individual who renders no personal services has no "earned income" even though such an individual may have net earnings from self-employment from a trade or business.

(ii) If a self-employed individual is engaged in a trade or business in which capital is a material income-producing factor, then, under section 911(b), his earned income is only that portion of the net profits from the trade or business which constitutes a reasonable allowance as compensation for personal services actually rendered. However, such individual's earned income cannot exceed 30 percent of the net profits of such trade or business. The net profits of the trade or business is not necessarily the same as the net earnings from self-employment derived from such trade or business.

(4) *Minimum earned income when both personal services and capital are material income-producing factors.* (i) If a self-employed individual renders personal services on a full-time, or substantially full-time, basis to only one trade or business, and if with respect to such trade or business capital is a material income-producing factor, then the amount of such individual's earned income from the trade or business is considered to be not less than so much of his share in the net profits of such trade or business as does not exceed \$2,500.

(ii) If a self-employed individual renders substantial personal services to more than one trade or business, and if with respect to all such trades or businesses such self-employed individual actually renders personal services on a full-time, or substantially full-time, basis, then the earned income of the self-employed individual from trades or businesses for which he renders substantial personal services and in which both personal services and capital are material income-producing factors is considered to be not less than—

(a) So much of such individual's share of the net profits from all trades or businesses in which he renders substantial personal services as does not exceed \$2,500, reduced by

(b) Such individual's share of the net profits of any trade or business in which only personal services is a material income-producing factor.

However, in no event shall the share of the net profits of any trade or business in which capital is a material income-producing factor be reduced below the amount which would, without regard to the provisions of this subdivision, be treated as the earned income derived from such trade or business under section 911(b). In making the computation required by this subdivision, any trade or business with respect to which the individual renders substantial per-

sonal services shall be taken into account irrespective of whether a qualified plan has been established by such trade or business.

(iii) If the provisions of subdivision (ii) of this subparagraph apply in determining the earned income of a self-employed individual, and such individual is engaged in two or more trades or businesses in which capital and personal services are material income-producing factors, then the total amount treated as the earned income shall be allocated to each such trade or business for which he performs substantial personal services in the same proportion as his share of net profits from each such trade or business bears to his share of the total net profits from all such trades or businesses. Thus, in such case, the amount of earned income attributable to any such trade or business is computed by multiplying the total earned income as determined under subdivision (ii) of this subparagraph by the individual's net profits from such trade or business and dividing that product by the individual's total net profits from all such trades or businesses.

(iv) For purposes of this subparagraph, the determination of whether an individual renders personal services on a full-time, or substantially full-time, basis is to be made with regard to the aggregate of the trades and businesses with respect to which the employee renders substantial personal services as a common-law employee or as a self-employed individual. However, for all other purposes in applying the rules of this subparagraph, a trade or business with respect to which an individual is a common-law employee shall be disregarded.

(d) *Definition of owner-employee.* For purposes of section 401 and the regulations thereunder, the term "owner-employee" means a proprietor of a proprietorship, or, in the case of a partnership, a partner who owns either more than 10 percent of the capital interest, or more than 10 percent of the profits interest, of the partnership. Thus, an individual who owns only 2 percent of the profits interest but 11 percent of the capital interest of a partnership is an owner-employee. A partner's interest in the profits and the capital of the partnership shall be determined by the partnership agreement. In the absence of any provision regarding the sharing of profits, the interest in profits of the partners will be determined in the same manner as their distributive shares of partnership taxable income. However, a guaranteed payment (as described in section 707(c)) is not considered a distributive share of partnership income for such purpose. See section 704(b), relating to the determination of the distributive share by the income or loss ratio, and the regulations thereunder. In the absence of a provision in the partnership agreement, a partner's capital interest in a partnership shall be determined on the basis of his interest in the assets of the partnership which would be distributable to such partner upon his withdrawal from the partnership, or upon liquidation of the partnership, whichever is the greater.

(e) *Definition of employer.* (1) For purposes of section 401, a sole proprietor is considered to be his own employer, and the partnership is considered to be the employer of each of the partners. Thus, an individual partner is not an employer who may establish a qualified plan with respect to his services to the partnership.

(2) Regardless of the provision of local law, a partnership is deemed, for purposes of section 401, to be continuing until such time as it is terminated within the meaning of section 708, relating to the continuation of a partnership.

§ 1.401-11 General rules relating to plans covering self-employed individuals.

(a) *Introduction.* This section provides certain rules which supplement, and modify, the rules of §§ 1.401-1 through 1.401-9 in the case of a qualified pension, annuity, or profit-sharing plan which covers a self-employed individual who is an employee within the meaning of section 401(c)(1). The provisions of this section apply to taxable years beginning after December 31, 1962.

(b) *General rules.* (1) If the amount of employer contributions for common-law employees covered under a qualified plan is related to the earned income (as defined in section 401(c)(2)) of a self-employed individual, or group of self-employed individuals, such a plan is a profit-sharing plan (as described in paragraph (b)(1)(ii) of § 1.401-1) since earned income is dependent upon the profits of the trade or business with respect to which the plan is established. Thus, for example, a plan, which provides that the employer will contribute 10 percent of the earned income of a self-employed individual but no more than \$2,500, and that the employer contribution on behalf of common-law employees shall be the same percentage of their salaries as the contribution on behalf of the self-employed individual bears to his earned income, is a profit-sharing plan, since the amount of the employer's contribution for common-law employees covered under the plan is related to the earned income of a self-employed individual and thereby to the profits of the trade or business. On the other hand, for example, a plan which defines the compensation of any self-employed individual as his earned income and which provides that the employer will contribute 10 percent of the compensation of each employee covered under the plan is a pension plan since the contribution on behalf of common-law employees is fixed without regard to whether the self-employed individual has earned income or the amount thereof.

(2) In the case of a trustee plan, the contributions made to the trust must be made for the purpose of distributing to the employees covered under the plan the corpus and income of such trust in accordance with the plan. Therefore, if the applicable local law proscribes the sharing of profits with some of the employees who are eligible to participate, or who may become eligible to participate, in a profit-sharing plan, a trust forming part of such a profit-sharing

plan cannot satisfy the requirements for qualification. For example, if the State law proscribes fee-splitting between attorneys and non-attorneys and if such law treats the sharing of profits under a profit-sharing plan as such fee-splitting, a qualified profit-sharing plan cannot be established if it is possible that an employee who is not an attorney may be covered under such plan.

(3) The Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 809) permits self-employed individuals to be treated as employees and therefore included in qualified plans, but it is clear that such law requires such self-employed individuals to provide benefits for their employees on a nondiscriminatory basis. Self-employed individuals will not be considered as providing contributions or benefits for an employee to the extent that the wages or salary of the employee covered under the plan are reduced at or about the time the plan is adopted.

(4) In addition to permitting self-employed individuals to participate in qualified plans, the Self-Employed Individuals Tax Retirement Act of 1962 extends to such individuals some of the tax benefits allowed common-law employee-participants in such plans. However, the tax benefits allowed a self-employed individual are restricted by the limits which are placed on the deductions allowed for contributions on such an individual's behalf. In view of these restrictions on the tax benefits extended to any self-employed individual, a self-employed individual participating in a qualified plan may not participate in any forfeitures. Therefore, in the case of a qualified plan which covers any self-employed individual, a separate account must be established for each self-employed individual to which no forfeitures can be allocated.

(c) *Requirements as to coverage.* (1) In general, section 401(a)(3) and the regulations thereunder prescribe the coverage requirements which a qualified plan must satisfy. However, if such a plan covers self-employed individuals who are not owner-employees, it must, in addition to satisfying such requirements, satisfy the requirements of this paragraph. If any owner-employee is covered under a qualified plan, the provisions of this paragraph do not apply, but the provisions of section 401(d), including section 401(d)(3), do apply (see § 1.401-12).

(2) (i) Section 401(a)(3)(B) provides that a plan may satisfy the coverage requirements for qualification if it covers such employees as qualify under a classification which is found not to discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. Section 401(a)(5) sets forth certain classifications that will not in themselves be considered discriminatory. Under such section, a classification which excludes all employees whose entire remuneration constitutes "wages" under section 3121(a)(1), will not be considered discriminatory merely because of such exclusion. Simi-

larly, a plan which includes all employees will not be considered discriminatory solely because the contributions or benefits based on that part of their remuneration which is excluded from "wages" under section 3121(a)(1) differ from the contributions or benefits based on that part of their remuneration which is not so excluded. However, in determining if a classification is discriminatory under section 401(a)(3)(B), consideration will be given to whether the total benefits resulting to each employee under the plan and under the Social Security Act, or under the Social Security Act only, establish an integrated and correlated retirement system satisfying the tests of section 401(a). A plan which covers self-employed individuals none of whom is an owner-employee may also be integrated with the contributions or benefits under the Social Security Act. In such a case, the portion of the earned income (as defined in section 401(c)(2)) of such an individual which does not exceed \$4,800 and which is derived from the trade or business with respect to which the plan is established shall be treated as "wages" under section 3121(a)(1) subject to the tax imposed by section 3111 (relating to the tax on employers) for purposes of applying the rules of paragraph (e)(2) of § 1.401-3, relating to the determination of whether a plan is properly integrated. However, if the plan covers an owner-employee, the rules relating to the integration contained in paragraph (h) of § 1.401-12 apply.

(ii) Certain of the classifications enumerated in section 401(a)(5) do not apply to plans which provide contributions or benefits for any self-employed individual. Since self-employed individuals are not salaried or clerical employees, the provision in section 401(a)(5) permitting a plan, in certain cases, to cover only this type of employee is inapplicable to plans which cover any self-employed individual.

(iii) The classifications enumerated in section 401(a)(5) are not exclusive, and it is not necessary that a qualified plan cover all employees or all full-time employees. Plans may qualify even though coverage is limited in accordance with a particular classification incorporated in the plan, provided the effect of covering only such employees as satisfy such eligibility requirement does not result in the prohibited discrimination.

(d) *Discrimination as to contributions or benefits.*—(1) *In general.* In order for a plan to be qualified, there must be no discrimination in contributions or benefits in favor of employees who are officers, shareholders, supervisors, or highly compensated, as against other employees whether within or without the plan. A self-employed individual, by reason of the contingent nature of his compensation, is considered to be a highly-compensated employee, and thus is a member of the group in whose favor discrimination is prohibited. In determining whether the prohibited discrimination exists, the total employer contribution on behalf of a self-employed individual shall be taken into account regardless of the fact that only a portion of such contribution is allowed

as a deduction. For additional rules relating to discrimination as to contributions or benefits with regard to plans covering any owner-employee, see § 1.401-12.

(2) *Base for computing contributions or benefits.* (i) A plan which is otherwise qualified is not considered discriminatory merely because the contributions or benefits provided under the plan bear a uniform relationship to the total compensation, basic compensation, or regular rate of compensation of the employees, including self-employed individuals, covered under the plan.

(ii) In the case of a self-employed individual who is covered under a qualified plan, the total compensation of such individual is the earned income (as defined in section 401(c)(2)) which such individual derives from the employer's trade or business, or trades or businesses, with respect to which the qualified plan is established. Thus, for example, in the case of a partner, his total compensation includes both his distributive share of partnership income, whether or not distributed, and guaranteed payments described in section 707(c) made to him by the partnership establishing the plan, to the extent that such income constitutes earned income as defined in section 401(c)(2).

(iii) (a) The basic or regular rate of compensation of any self-employed individual is that portion of his earned income which bears the same ratio to his total earned income derived from the trade or business, or trades or businesses, with respect to which the qualified plan is established as the aggregate basic or regular compensation of all common-law employees covered under the plan bears to the aggregate total compensation of such employees derived from such trade or business, or trades or businesses.

(b) If an employer establishes two or more plans which satisfy the requirements of section 401(a) separately, and only one such plan covers a self-employed individual, the determination of the basic or regular rate of compensation of such self-employed individual is made with regard to the compensation of common-law employees covered under the plan which provides contributions or benefits for such self-employed individual. On the other hand, if two or more plans must be considered together in order to satisfy the requirements of section 401(a), the computation of the basic or regular rate of compensation of a self-employed individual must be made with regard to the compensation of the common-law employees covered by so many of such plans as are required to be taken together in order to satisfy the qualification requirements of section 401(a).

(3) *Discriminatory contributions.* If a discriminatory contribution is made by, or for, a self-employed individual who is an employee within the meaning of section 401(c)(1) because of an erroneous assumption as to the earned income of such individual, the plan will not be considered discriminatory if adequate adjustment is made to remove such discrimination. In the case of any self-employed individual who is an owner-

employee, the amount of any excess contribution to be returned and the manner in which it is to be repaid are determined by the provisions of section 401(d)(8) and (e). However, if any self-employed individual, including any owner-employee, has not made the full contribution permitted to be made on his behalf as an employee, then, if the plan expressly provides, so much of any excess contribution by such self-employed individual's employer as may, under the provisions of the plan, be treated as a contribution made by such individual as an employee can be so treated.

(e) *Distribution of entire interest.* (1) If a trust forms part of a plan which covers a self-employed individual, such trust shall constitute a qualified trust under section 401 only if the plan of which such trust is a part expressly provides that the entire interest of each employee, including any common-law employee, will be distributed in accordance with the provisions of subparagraph (2) or (3) of this paragraph.

(2) Unless the provisions of subparagraph (3) of this paragraph apply, the entire interest of each employee (including contributions he has made on his own behalf, contributions made on his behalf by his employer, and interest thereon) must be actually distributed to such employee—

(i) In the case of an employee, other than an individual who is, or has been, an owner-employee under the plan, not later than the last day of the taxable year of such employee in which he attains the age of 70½, or not later than the last day of the taxable year in which such employee retires, whichever is later, and

(ii) In the case of an employee who is, or has been, an owner-employee under the plan, not later than the last day of the taxable year in which he attains the age of 70½.

(3) In lieu of distributing an employee's entire interest in a qualified plan as provided in subparagraph (2) of this paragraph, such interest may be distributed no later than the last taxable year described in such subparagraph (2) in which a distribution under a qualified plan is required to commence. Then, if the plan expressly provides, the entire interest of such an employee may be distributed to him ratably over any of the following periods—

(i) The life of the employee, or

(ii) The lives of the employee and his spouse, or

(iii) A period certain not longer than the life expectancy of the employee, or

(iv) A period certain not longer than the joint life and last survivor expectancy of the employee and his spouse.

(4) For purposes of subparagraph (3) of this paragraph, the determination of the life expectancy of the employee or the joint life and last survivor expectancy of the employee and his spouse is to be made at the time the employee receives the first distribution of his entire interest under the plan. If the distribution of an employee's entire interest is to take place over a period certain, such period cannot exceed the

period computed by the use of the expected return multiples in § 1.72-9. For example, in the case of a male age 65 with no spouse, his entire interest must be distributed ratably over a period of 15 years. In making the computations required by this paragraph, fractions of a month must be rounded off to the nearest whole month. For example, a male age 70 with no spouse is considered to have a life expectancy of not more than 12 years and 1 month.

(5) If an employee's entire interest is distributed to him in the form of an annuity contract, and the distribution of such contract takes place before the end of the latest taxable year described in subparagraph (2) of this paragraph in which a distribution under a qualified plan is required to commence, then the requirements of section 401(a)(9) are satisfied if the employee's interest will be paid ratably over a period described in subparagraph (3) of this paragraph.

(6) The distribution of an employee's entire interest includes the increment earned on such interest after the distribution of such entire interest has commenced. Accordingly, a plan which is subject to the provisions of this paragraph must prescribe the method by which the interest increment, if any, on an employee's entire interest is to be computed. The plan may provide that such income increment is the amount of income actually earned by the employee's entire interest or that such increment is determined by use of a fixed rate of interest over the entire distribution. However, in either case, such income increment is to be distributed in the year in which it is earned.

(7) The requirements of section 401(a)(9) do not preclude contributions from being made on behalf of an owner-employee under a qualified plan subsequent to the taxable year in which the distribution of his entire interest is required to commence. Thus, if all other requirements for qualification are satisfied, a qualified plan may provide contributions for an owner-employee who has already attained age 70½. However, a distribution of benefits attributable to contributions made on behalf of an owner-employee in a taxable year beginning after the taxable year in which he attains the age of 70½ must satisfy the requirements of subparagraph (3) of this paragraph. In such a case, such requirements shall be applied separately with respect to the contributions made in each such taxable year. For example, if an owner-employee who has no spouse makes additional contributions in his taxable year in which he is 72 and if benefits attributable to the additional contributions are to be distributed over a term certain, such term must begin with that taxable year and cannot exceed 11 years (the life expectancy of a person age 72).

(8) This paragraph shall not apply and an otherwise qualified trust will not be disqualified if the method of distribution under the plan is one which was designated by a common-law employee prior to October 10, 1962, and such method of distribution is not in accordance with the provisions of section 401

(a)(9). Such exception applies regardless of whether the actual distribution of the entire interest of an employee making such a designation, or any portion of such interest, has commenced prior to October 10, 1962.

§ 1.401-12 Requirements for qualification of trusts and plans benefiting owner-employees.

(a) *Introduction.* This section prescribes the additional requirements which must be met for qualification of a trust forming part of a pension or profit-sharing plan, or of an annuity plan, which covers any self-employed individual who is an owner-employee as defined in section 401(c)(3). However, to the extent that the provisions of § 1.401-11 are not modified by the provisions of this section, such provisions are also applicable to a plan which covers an owner-employee. The provisions of this section apply to taxable years beginning after December 31, 1962.

(b) *General rules.* (1) The qualified plan and trust of an unincorporated trade or business does not have to satisfy the additional requirements for qualification merely because an owner-employee derives earned income (as defined in section 401(c)(2)) from the trade or business with respect to which the plan is established. Such additional requirements need be satisfied only if an owner-employee is actually covered under the plan of the employer. An owner-employee may only be covered under a plan of an employer if such owner-employee has so consented. However, the consent of the owner-employee may be either expressed or implied. Thus, for example, if contributions are, in fact, made on behalf of an owner-employee, such owner-employee is considered to have impliedly consented to being covered under the plan.

(2) A qualified plan covering an owner-employee must be a definite written program and arrangement setting forth all provisions essential for qualification at the time such plan is established. Therefore, for example, even though the owner-employee is the only employee covered under the plan at the time the plan is established, the plan must incorporate all the provisions relating to the eligibility and benefits of future employees.

(c) *Bank trustee.* (1)(i) If a trust created after October 9, 1962, is to form a part of a qualified pension or profit-sharing plan covering an owner-employee, or if a trust created before October 10, 1962, but not exempt from tax on October 9, 1962, is to form part of such a plan, the trustee of such trust must be a bank as defined in subparagraph (2) of this paragraph, unless an exception contained in subparagraph (4) of this paragraph applies.

(ii) The provisions of this paragraph do not apply to an employees' trust created prior to October 10, 1962, if such trust was exempt from tax on October 9, 1962, even though the plan of which such trust forms a part is amended after December 31, 1962, to cover any owner-employee. Although the trustee of a trust described in the preceding sentence

need not be a bank, all other requirements for the qualification of such a trust must be satisfied at the time an owner-employee is first covered under such plan.

(2) The term "bank" as used in this paragraph means—

(i) A bank as defined in section 581;
(ii) A corporation which, under the laws of the State of its incorporation or under the laws of the District of Columbia, is subject to both the supervision of, and examination by, the authority in such jurisdiction in charge of the administration of the banking laws;

(iii) In the case of a trust created or organized outside of the United States, that is, outside the States and the District of Columbia, a bank or trust company, wherever incorporated, exercising fiduciary powers and subject to both supervision and examination by governmental authority.

(3) Although a bank is required to be the trustee of a qualified trust, another person, including the employer, may be granted the power in the trust instrument to control the investment of the trust funds either by directing investments, including reinvestments, disposals, and exchanges, or by disapproving proposed investments, including reinvestments, disposals, or exchanges.

(4)(i) This paragraph does not apply to a trust created or organized outside the States and the District of Columbia before October 10, 1962, if, on October 9, 1962, such trust is described in section 402(c) as an organization treated as if it was a trust exempt from tax under section 501(a).

(ii) In addition, the requirement that the trustee must be a bank does not apply to a qualified trust forming a part of a pension or profit-sharing plan if—

(a) The investments of all the funds in such trust are in annuity, endowment, or life insurance contracts, issued by a company which is a life insurance company as defined in section 801(a) during the taxable year immediately preceding the year that such contracts are originally purchased;

(b) All the proceeds which are, or may become, payable under the contract are payable directly to the employee or his beneficiary;

(c) The plan contains a provision to the effect that, at such time as the employer who has established the trust is notified by the district director that the trustee is not keeping such records, or making such returns, or rendering such statements, as are required by forms or regulations, the employer is to substitute a bank as trustee or custodian of the trust.

However, a qualified trust may only purchase insurance protection to the extent permitted under a qualified plan. Under a qualified plan, life insurance protection may only be provided if such protection is incidental (see paragraph (b)(1)(i) and (ii) of § 1.401-1).

(5) An employer may designate several trusts (or custodial accounts) or a trust or trusts and an annuity plan or plans as constituting parts of a single plan which is intended to satisfy the requirements for qualification. How-

ever, each trust (or custodial account) so designated which is part of a plan covering an owner-employee must satisfy the requirements of this paragraph. Thus, for example, if all other requirements for qualification are satisfied by the plan, a qualified profit-sharing plan may provide that a portion of the contributions under the plan will be paid to a custodial account, the custodian of which is a bank, for investment in stock of a regulated investment company, and the remainder of such contributions will be paid to a trust, the trustee of which is not a bank, for investment in annuity contracts.

(d) *Profit-sharing plan.* (1) A profit-sharing plan, as defined in paragraph (b) (1) (ii) of § 1.401-1, which covers any owner-employee must contain a definite formula for determining the contributions to be made by the employer on behalf of employees, other than owner-employees. A formula to be definite must specify the portion of profits to be contributed to the trust and must also define profits for plan purposes. A definite formula may contain a variable factor, if the value of such factor may not vary at the discretion of the employer. For example, the percentage of profits to be contributed each year may differ depending on the amount of profits. On the other hand, a formula which, for example, specifies that profits for plan purposes are not to exceed the cash on hand at the time the employer contribution is made is not a definite formula. A definite formula is satisfactory if it limits the amount to be contributed on behalf of all employees covered under the plan to the amount which permits self-employed individuals to obtain the maximum deduction under section 404(a).

(2) A definite contribution formula constitutes an integral part of a qualified profit-sharing plan and may not be amended except for a valid business reason.

(3) The requirement that a profit-sharing plan contain a definite formula for determining the amount of contributions to be made on behalf of employees does not apply to contributions which are made on behalf of owner-employees. However, such contributions are subject to the requirement that they be nondiscriminatory with respect to other employees and must not exceed the limitations on allowable and deductible contributions which may be made by owner-employees.

(e) *Requirements as to coverage—*(1) *Coverage of all employees.* The coverage requirements contained in section 401(a) (3) do not apply to a plan which covers any owner-employee. However, such a plan must satisfy the coverage requirements of section 401(d), including section 401(d) (3). Accordingly, a plan which covers an owner-employee must benefit each employee of the trade or business (other than any owner-employee who does not consent to be covered under the plan) whose customary period of employment has been for more than 20 hours a week for more than five months during each of three consecutive periods of twelve calendar months.

Therefore, a plan may not provide, for example, that an employee, other than an owner-employee, is ineligible to participate because he does not consent to be a participant or because he does not consent to make reasonable contributions under the plan.

(2) *Period of service.* (i) In determining whether an employee renders service to the same employer, and, therefore, must be covered under the plan of such employer, a partnership is considered to be one employer during the entire period prior to the time it is terminated within the meaning of section 708 (see paragraph (e) (2) of § 1.401-10).

(ii) In the case of a common-law employee who becomes an employee within the meaning of section 401(c) (1) with respect to the same trade or business, his period of employment is the aggregate of his service as a common-law employee and an employee within the meaning of section 401(c) (1).

(iii) In determining whether any employee, including any owner-employee, has three years of service, past service of any such employee may be taken into account as provided in paragraph (b) of § 1.401-10. Thus, if an employer takes into account past service for any owner-employee, he must take into account the past service of all his other employees to the same extent. However, a plan may provide for coverage after a period of service which is shorter than three years, but in no case may the plan require a waiting period for employees which is longer than that required for the owner-employees.

(f) *Discrimination in contributions or benefits.* (1) Variations in contributions or benefits may be provided under the plan so long as the plan does not discriminate, either as to contributions or benefits, in favor of officers, employees whose principal duties consist in supervising the work of other employees, or highly compensated employees, as against other employees (see § 1.401-4). For the purpose of determining whether the provisions of a plan which provide contributions or benefits for an owner-employee result in the prohibited discrimination, an owner-employee, like other self-employed individuals, is considered a highly compensated employee (see paragraph (d) of § 1.401-11). Whether or not a plan is discriminatory is determined by the actual operation of the plan as well as by its formal provisions.

(2) The provisions of section 401(a) (5), relating to certain plan provisions which will not in and of themselves be considered discriminatory, are not applicable to any plan which covers any owner-employee. Such a plan must, instead, satisfy the requirements of section 401(a) (10) and section 401(d) (6). Accordingly, a plan is not discriminatory within the meaning of section 401(a) (4) merely because the contributions or benefits provided for the employees covered under the plan bear a uniform relationship to the total compensation, or to the basic or regular rate of compensation, of such employees. The total compensation or the basic or regular rate of compensation of an owner-employee is

computed in accordance with the provisions of paragraph (d) (2) of § 1.401-11.

(3) Even though the contributions under the plan do not bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered thereunder and the plan would otherwise be considered discriminatory within the meaning of section 401(a) (4), the plan shall not be considered discriminatory if such variation is due to employer contributions on behalf of any owner-employee which are required, under the plan, to be applied to pay premiums or other consideration on one or more level premium contracts described in section 401(e) (3) (A). In a taxable year to which the foregoing exception applies and, therefore, one in which the contributions under the plan would otherwise be discriminatory, the employer contributions to pay such premiums or other consideration must be the only employer contributions made for the owner-employee, and the contributions for such taxable year under such plan must not be in excess of the amount permitted to be paid toward the purchase of such a contract under the provisions of section 401(e) (3). Furthermore, the exception described in this subparagraph only applies to contributions made under a plan which otherwise satisfies the requirements of section 401(a) (4) and the regulations thereunder. Thus, if a plan provides for the purchase, in accordance with section 401(e) (3), of a level premium contract for an owner-employee, then such plan must provide either that the benefits for all employees are nondiscriminatory or, in the case of a money-purchase type of plan, that the contributions for all employees are based on compensation determined in a nondiscriminatory manner. For example, since the contributions on behalf of the owner-employee are based on his earned income during the period preceding the purchase of the contract, the contributions for other employees must be based on their compensation during the same period if this will result in larger contributions on their behalf.

(4) In the case of a plan which covers any owner-employee, the contributions or benefits provided under the plan cannot vary with respect to years of service except as provided in subparagraph (5) of this paragraph.

(5) The provisions of section 401(d) (3) do not preclude the coverage of employees with less than three years of service if such coverage is provided on a nondiscriminatory basis. However, a plan will not be disqualified merely because the contributions or benefits for employees who have less than three years of service are not as favorable as the contributions or benefits for employees having more than three years of service.

(g) *Nonforfeitable rights.* (1) (i) Except as provided in subparagraph (2) of this paragraph, if an owner-employee is covered under the plan of his employer, each employee's rights to the contributions, or to the benefits derived from the contributions, of such employer must be nonforfeitable at the time such con-

tributions are paid to, or under, the plan. The employees who must obtain such nonforfeitable rights include the self-employed individuals who are covered under the plan. As to what constitutes nonforfeitable rights of an employee, see paragraph (a) (2) of § 1.402(b)-1.

(ii) Under section 401(d) (2), it is necessary that the employer contributions under the plan be allocated among the participants covered under the plan from the time such contributions are paid. Therefore, plans which provide that the employer contributions thereunder are an unallocated fund from which benefits are to be paid do not satisfy the requirements of this provision.

(2) The provisions of subparagraph (1) of this paragraph do not apply to the extent that employer contributions on behalf of any employee must remain forfeitable in order to satisfy the requirements of paragraph (c) of § 1.401-4. However, employer contributions on behalf of employees whose rights are required to remain forfeitable to satisfy such requirements must be nonforfeitable except for such contingency.

(h) Integration with social security.

(1) If a qualified plan covers any owner-employee, then the rules relating to the integration of such plan with the contributions or benefits under the Social Security Act are provided in this paragraph. Accordingly, the provisions of paragraph (e) of § 1.401-3 and paragraph (c) of § 1.401-11 do not apply to such a plan. In the case of a plan which provides contributions or benefits for any owner-employee, integration of the plan with the Social Security Act for any taxable year of the employer can take place only if not more than one-third of the employer contributions under the plan which are deductible under section 404 for that year are made on behalf of the owner-employees. If such requirement is satisfied, then the plan may be integrated with the contributions or benefits under the Social Security Act in accordance with the rules of subparagraph (3) of this paragraph.

(2) (i) For purposes of subparagraph (1) of this paragraph, in determining the total amount of employer contributions which are deductible under section 404, the provisions of section 404(a), including the provisions of section 404(a) (9) (relating to plans benefiting self-employed individuals), and section 404(e) (relating to the special limitations for self-employed individuals) are taken into account, but the provisions of section 404(a) (10) (relating to the special limitation on the amount allowed as a deduction for self-employed individuals) are not taken into account.

(ii) The amount of deductible employer contributions which are made on behalf of all owner-employees for the year is compared with the amount of deductible employer contributions for the year made on behalf of all employees covered under the plan (including self-employed individuals who are not owner-employees and owner-employees) for the purpose of determining whether the deductible contributions by the employer on behalf of owner-employees are not

more than one-third of the total deductible contributions.

(3) If a plan covering an owner-employee satisfies the requirement of subparagraph (1) of this paragraph, and if the employer wishes to integrate such plan with the contributions or benefits under the Social Security Act, then—

(i) The employer contributions under the plan on behalf of any owner-employee shall be reduced by an amount determined by multiplying the earned income of such owner-employee which is derived from the trade or business with respect to which the plan is established and which does not exceed \$4,800 by the rate of tax imposed under section 1401; and

(ii) The employer contributions under the plan on behalf of any employee other than an owner-employee may be reduced by an amount not in excess of the amount determined by multiplying the employee's wages under section 3121(a) (1) by the rate of tax imposed under section 3111. For purposes of this subdivision, the earned income of a self-employed individual which is derived from the trade or business with respect to which the plan is established and which does not exceed \$4,800 shall be treated as "wages" under section 3121(a) (1).

(4) A money purchase pension plan or a profit-sharing plan may provide that such plan will be integrated with the Social Security Act only for such taxable years of the employer in which the requirements for integration are satisfied. However, a qualified plan cannot provide that employer contributions are only to be made for taxable years in which the integration requirements are satisfied.

(i) *Limit on contributions on behalf of an owner-employee.* (1) Section 401 (d) (5) requires that a plan which covers any owner-employee must contain provisions which restrict the employer contributions that may be made on behalf of any owner-employee for each taxable year to an amount no greater than that which is deductible under section 404. In computing the amount deductible under section 404 for purposes of section 401(d) (5) and this paragraph, the limitations contained in section 404 (a) (9) and (e), relating to special limitations for self-employed individuals, are taken into account, but such amount is determined without regard to section 404(a) (10), relating to the special limitation on the amount allowed as a deduction for self-employed individuals. Accordingly, a qualified plan which covers any owner-employee cannot permit employer contributions to be made on behalf of such owner-employee in excess of 10 percent of the earned income which is derived by such owner-employee from the trade or business with respect to which the plan is established, or permit the employer to contribute more than \$2,500 on behalf of any such owner-employee for any taxable year.

(2) (i) In determining whether the plan permits contributions to be made in excess of the limitations of subparagraph (1) of this paragraph, employer contributions under the plan which are

allocable to the purchase of life, accident, health, or other insurance, are not to be taken into account. To determine the amount of employer contributions under the plan which are allocable to the purchase of life, accident, health, or other insurance, see section 72(m) (2) and the regulations thereunder. However, contributions for such insurance can be made only to the extent otherwise permitted under sections 401 through 404 and the regulations thereunder.

(ii) A further exception to the limit on the amount of contributions which an employer may make under the plan on behalf of an owner-employee is made in the case of contributions which are required, under the plan, to be applied to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts described in section 401(e) (3) (see section 401(e) (3) and the regulations thereunder).

(j) *Excess contributions.* The provisions of section 401(e) define the term "excess contribution" and indicate the consequences of making such a contribution (see § 1.401-13). However, section 401(d) (8) provides that a qualified plan which provides contributions or benefits for any owner-employee must contain certain provisions which complement the rules contained in section 401(e). Under section 401(d) (8), a qualified plan must provide that—

(1) An excess contribution, as defined in section 401(e) (1), must be returned to the owner-employee on whose behalf it is made, together with the net income earned on the excess contribution;

(2) For each taxable year for which the trust is considered to be a nonqualified trust with respect to an owner-employee under section 401(e) (2) because an excess contribution and the earnings thereon have not been returned to such owner-employee, the income of the trust for that taxable year attributable to the interest of such owner-employee is to be paid to him.

(3) If an excess contribution is determined to be willfully made (within the meaning of section 401(e) (2) (E)), the entire interest of the owner-employee on whose behalf such contribution was made is required to be distributed to such owner-employee. Furthermore, the plan must require the distribution of an owner-employee's entire interest under the plan if a willful excess contribution is determined to have been made under any other plan in which the owner-employee is covered as an owner-employee.

(k) *Contributions of property under a qualified plan.* (1) The contribution of property, other than money, by the person who is the employer (within the meaning of section 401(c) (4)) to a qualified trust forming a part of a plan which covers employees some or all of whom are owner-employees who control (within the meaning of section 410(d) (9) (B) and the regulations thereunder) the trade or business with respect to which the plan is established is a prohibited transaction between such trust and the employer-grantor of such trust (see section 503(j) (1) (D) and the regulations thereunder).

(2) A contribution of property, other than money, to a qualified trust by an owner-employee who controls, or a member of a group of owner-employees who together control, the trade or business with respect to which the plan is established, or a contribution of property, other than money, to a qualified trust by a member of such an owner-employee's family (as defined in section 267(c)(4)), is a prohibited transaction. If the plan does not cover an owner-employee, or group of owner-employees, who control the trade or business, see the rules relating to prohibited transactions contained in section 503, other than the provisions of section 503(j).

(1) *Controlled trades or businesses—*

(1) *Plans covering an owner-employee who controls another trade or business.*

(i) A plan must not cover any owner-employee, or group of two or more owner-employees, if such owner-employee, or group of owner-employees, control (within the meaning of subparagraph (3) of this paragraph) any other trade or business, unless the employees of such other trade or business controlled by such owner-employee, or such group of owner-employees, are included in a plan which satisfies the requirements of section 401(a), including the qualification requirements of section 401(d). The employees who must be covered under the plan of the trade or business which is controlled include the self-employed individuals who are not owner-employees and the owner-employees who consent to be covered by such plan. Accordingly, the employer must determine whether any owner-employee, or group of owner-employees, who may participate in the plan which is established by such employer controls any other trade or business, and whether the requirements of this subparagraph are satisfied with respect to the plan established in such other trade or business. The plan of an employer may exclude an owner-employee who controls another trade or business from coverage under the plan even though such owner-employee consents to be covered, if a plan which satisfies the requirements of subdivision (ii) of this subparagraph has not been established in the trade or business which such owner-employee controls.

(ii) The qualified plan which the owner-employee, or owner-employees, are required to provide for the employees of the trade or business which they control must provide contributions and benefits which are not less favorable than the contributions and benefits provided for the owner-employee, or owner-employees, under the plan of any trade or business which they do not control. Thus, for example, if the contributions or benefits for the owner-employee under the plan of the trade or business which he does not control are computed on the basis of his total (as compared to basic or regular rate) of compensation, then the contributions or benefits for employees covered under the plan of the trade or business which the owner controls must be computed on the basis of their total compensation. However, the requirements of this subdivision cannot be satisfied if the benefits and contribu-

tions provided under the plan for the employees of the trade or business which is controlled are not comparable to those provided under the plan covering the owner-employee, or group of owner-employees, in the trade or business which they do not control. Thus, for example, if the owner-employee is covered by a pension plan in the trade or business which he does not control, he may not satisfy the requirements of this subdivision by establishing a profit-sharing plan in the trade or business which he does control.

(iii) If an individual is covered as an owner-employee under the plans of two or more trades or businesses which he does not control and such individual controls a trade or business, then the contributions or benefits of the employees under the plan of the trade or business which he does control must be as favorable as those provided for him under the most favorable plan of the trade or business which he does not control.

(2) *Owner-employees who control more than one trade or business.* If the plan provides contributions or benefits for an owner-employee who controls, or group of owner-employees who together control, the trade or business with respect to which the plan is established, and such owner-employee, or group of owner-employees, also control as owner-employees one or more other trades or businesses, plans must be established with respect to such controlled trades or businesses so that when taken together they form a single plan which satisfies the requirements of section 401 (a) and (d) with respect to the employees of all the controlled trades or businesses.

(3) *Control defined.* (i) For purposes of this paragraph, an owner-employee, or a group of two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such group of two or more owner-employees together—

(a) Own the entire interest in an unincorporated trade or business, or

(b) In the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

In determining whether an owner-employee, or group of owner-employees, control a trade or business within the meaning of the preceding sentence, it is immaterial whether or not such individuals could be covered under a plan established with respect to the trade or business. For example, if an individual who is an owner-employee has a 60-percent capital interest in another trade or business, such individual controls such trade or business and the provisions of this paragraph apply even though the individual derives no earned income, as defined in section 401(c)(2), from the controlled trade or business. For purposes of determining the ownership interest of an owner-employee, or group of owner-employees, an owner-employee, or group of owner-employees, is treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership controlled by such

owner-employee, or group of owner-employees.

(ii) The provisions of subparagraphs (1) and (2) of this paragraph apply only if the owner-employee who controls, or the group of owner-employees who control, a trade or business, or trades or businesses, within the meaning of subdivision (i) of this subparagraph is the same owner-employee, or group of owner-employees, covered under the plan intended to satisfy the requirements for qualification. Thus, for example, if A is a 50-percent partner in both the AB and AC partnership, and if the AB partnership wishes to establish a plan covering A and B, the provisions of subparagraphs (1) and (2) of this paragraph do not apply, since A does not control either partnership, and since B has no interest in the AC partnership.

(m) *Distribution of benefits.* (1) (i) Section 401(d)(4)(B) requires that a qualified plan which provides contributions or benefits for any owner-employee must not provide for the payment of benefits to such owner-employee at any time before he has attained age 59½. An exception to the foregoing rule permits a qualified plan to provide for the distribution of benefits to an owner-employee prior to the time he attains age 59½ if he is disabled within the meaning of section 213(g)(3) and the regulations thereunder. In general, section 213(g)(3) provides that an individual is considered disabled if he is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.

(ii) A qualified plan must provide that if, despite the restrictions in the plan to the contrary, an amount is prematurely distributed, or made available, to a participant in such plan who is, or has been, an owner-employee, then no contribution shall be made under the plan by, or for, such individual during any of the 5 taxable years of the plan beginning after the distribution is made.

(2) (i) The provisions of subparagraph (1) of this paragraph preclude an owner-employee who is a participant in a qualified pension or profit-sharing plan of his employer from withdrawing any part of the funds accumulated on his behalf except as provided in such subparagraph (1). However, the distribution of an owner-employee's interest, or any portion of such interest, after he attains age 59½ is determined by the provisions of the plan. Thus, for example, if a qualified pension plan provides that the normal retirement age under the plan is age 65, an owner-employee would not be entitled to a distribution of an amount under the plan merely because he attained age 59½.

(ii) The provisions of subparagraph (1) of this paragraph do not preclude the establishment of a profit-sharing plan which provides for the distribution of all, or part, of participants' accounts after a fixed number of years. However, such a plan must not permit a distribution of any amount to any owner-employee prior to the time the owner-em-

ployee has attained age 59½ or becomes disabled within the meaning of section 213(g)(3). On the other hand, if a distribution would have been made under the plan to an owner-employee but for the fact that he had not attained age 59½, then the amount of such distribution (including any increment earned on such amount) must be distributed to such owner-employee at such time as he attains age 59½.

(3) A qualified pension, annuity, or profit-sharing plan which covers an owner-employee must provide that the distribution of an owner-employee's entire interest under the plan must begin prior to the end of the taxable year in which he attains the age of 70½, and such distribution must satisfy the requirements of section 401(a)(9) and paragraph (e) of § 1.401-11. Furthermore, section 401(d)(7) provides that, if an owner-employee dies prior to the time his entire interest has been distributed to him, such owner-employee's entire remaining interest under the plan must, in general, either be distributed to his beneficiary, or beneficiaries, within 5 years, or be used within that period to purchase an immediate annuity for his beneficiary, or beneficiaries. However, a distribution within 5 years of the death of the owner-employee is not required if the distribution of his interest has commenced and such distribution is for a term certain over a period not extending beyond the joint life and survivor expectancy of the owner-employee and his spouse. Thus, for example, an annuity for the joint life and survivor expectancy of an owner-employee and his spouse which guarantees payments for 10 years is a distribution which is payable over a period which does not exceed the joint life and survivor expectancy of the owner-employee and his spouse if such expectancy is at least 10 years at the time the distribution first commences.

§ 1.401-13 Excess contributions on behalf of owner-employees. [Reserved]

PAR. 6. There are inserted immediately after § 1.404(d)-1, the following new sections:

§ 1.405 Statutory provisions; qualified bond purchase plans.

SEC. 405. *Qualified bond purchase plans*—(a) *Requirements for qualification.* A plan of an employer for the purchase for and distribution to his employees or their beneficiaries of United States bonds described in subsection (b) shall constitute a qualified bond purchase plan under this section if—

(1) The plan meets the requirements of section 401(a)(3), (4), (5), (6), (7), and (8) and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraphs (1), (5)(B), and (8)); and

(2) Contributions under the plan are used solely to purchase for employees or their beneficiaries United States bonds described in subsection (b).

(b) *Bonds to which applicable*—(1) *Characteristics of bonds.* This section shall apply only to a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

(A) Provides for payment of interest, or investment yield, only upon redemption;

(B) May be purchased only in the name of an individual;

(C) Ceases to bear interest, or provide investment yield, not later than 5 years after the death of the individual in whose name it is purchased;

(D) May be redeemed before the death of the individual in whose name it is purchased only if such individual—

(i) Has attained the age of 59½ years, or

(ii) Has become disabled (within the meaning of section 213(g)(3)); and

(E) Is nontransferable.

(2) *Must be purchased in name of employee.* This section shall apply to a bond described in paragraph (1) only if it is purchased in the name of the employee.

(c) *Deduction for contributions to bond purchase plans.* Contributions paid by an employer to or under a qualified bond purchase plan shall be allowed as a deduction in an amount determined under section 404 in the same manner and to the same extent as if such contributions were made to a trust described in section 401(a) which is exempt from tax under section 501(a).

(d) *Taxability of beneficiary of qualified bond purchase plan*—(1) *Gross income not to include bonds at time of distribution.* For purposes of this chapter, in the case of a distributee of a bond described in subsection (b) under a qualified bond purchase plan, or from a trust described in section 401(a) which is exempt from tax under section 501(a), gross income does not include any amount attributable to the receipt of such bond. Upon redemption of such bond, the proceeds shall be subject to taxation under this chapter, but the provisions of section 72 (relating to annuities, etc.) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply.

(2) *Basis.* The basis of any bond received by a distributee under a qualified bond purchase plan—

(A) If such bond is distributed to an employee, or with respect to an employee, who at the time of purchase of the bond, was an employee other than an employee within the meaning of section 401(c)(1), shall be the amount of the contributions by the employee which were used to purchase the bond, and

(B) If such bond is distributed to an employee, or with respect to an employee, who, at the time of purchase of the bond, was an employee within the meaning of section 401(c)(1), shall be the amount of the contributions used to purchase the bond which were made on behalf of such employee and were not allowed as a deduction under subsection (c).

The basis of any bond described in subsection (b) received by a distributee from a trust described in section 401(a) which is exempt from tax under section 501(a) shall be determined under regulations prescribed by the Secretary or his delegate.

(e) *Capital gains treatment not to apply to bonds distributed by trusts.* Section 402(a)(2) shall not apply to any bond described in subsection (b) distributed to any distributee and, for purposes of applying such section, any such bond distributed to any distributee and any such bond to the credit of any employee shall not be taken into account.

(f) *Employee defined.* For purposes of this section, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

(g) *Proof of purchase.* At the time of purchase of any bond to which this section applies, proof of such purchase shall be furnished in such form as will enable the purchaser, and the employee in whose name

such bond is purchased, to comply with the provisions of this section.

(h) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

[Sec. 405 as added by sec. 5, Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 826)]

§ 1.405-1 Qualified bond purchase plans.

(a) *Introduction.* Section 405 relates to the requirements for qualification of, and the tax treatment of funds contributed to, retirement plans of an employer for the benefit of his employees which are funded through the purchase of United States retirement plan bonds. Such bonds may be purchased under a qualified bond purchase plan described in section 405(a) and paragraph (b) of this section. The qualified bond purchase plan is an alternative method of providing some of the deferred compensation benefits provided by plans described in section 401. In addition, retirement bonds may be purchased under a qualified pension or profit-sharing plan described in section 401. A qualified bond purchase plan or a qualified pension or profit-sharing plan under which retirement bonds are purchased may cover only common-law employees, self-employed individuals, or both. A qualified bond purchase plan may be established after December 31, 1962, and retirement bonds may be purchased by a qualified pension or profit-sharing plan after December 31, 1962. For the terms and conditions of the retirement bonds, see section 405(b) and Treasury Department Circular, Public Debt Series—No. 1-63.

(b) *Qualified bond purchase plans.* (1) A qualified bond purchase plan is a definite written program and arrangement which is communicated to the employees and established and maintained by an employer solely to purchase for and distribute to his employees or their beneficiaries retirement bonds. These bonds must be purchased in the name of the employee on whose behalf the contributions are made. The plan must be a permanent plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), and (8) and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraphs (1), (5)(B), and (8)). The rules set forth in the regulations relating to those provisions shall be applicable to qualified bond purchase plans.

(2) A qualified bond purchase plan must provide that an employee's right to the proceeds of a bond purchased in his name are nonforfeitable and will in no event inure to the benefit of the employer or be reallocated in any manner.

(c) *Benefits under a qualified bond purchase plan.* (1) Except as provided in subparagraph (2) of this paragraph, a qualified bond purchase plan must conform to the definition of a pension plan in paragraph (b)(1)(i) of § 1.401-1, or the definition of a profit-sharing plan in paragraph (b)(1)(ii) of § 1.401-1. For example, if the qualified bond purchase plan is a profit-sharing plan, the plan must include the definite allocation formula described in paragraph (b)(1)(ii)

of § 1.401-1. In addition, if such a profit-sharing plan covers any owner-employee, the plan must also include the definite contribution formula described in section 401(d)(2)(B).

(2)(i) Under a qualified bond purchase plan, the bonds may be distributed to the employees at any time, and the plan need not prohibit the distribution or redemption of the bonds until the retirement of the employee. Accordingly, even though a qualified bond purchase plan is designed as a pension plan, it need not provide systematically for the payment of definitely determinable benefits. However, provisions for distribution must apply in a nondiscriminatory manner.

(ii) A qualified bond purchase plan which is designed as a pension plan may not contain a formula for contributions or benefits which might require the reallocation of amounts to an employee's credit or which might provide for the reversion of any amounts to the employer.

(d) *Contributions under a qualified bond purchase plan.* (1) The retirement bonds will be issued in the denominations of \$50, \$100, \$500, and \$1,000. Therefore, the contribution otherwise called for under the plan may not coincide with an amount that can be invested in retirement bonds. Accordingly, the plan must provide that the contributions on behalf of an individual employee for any year shall be rounded to the nearest multiple of \$50.

(2) Since the employee's rights to any bonds purchased for him under a qualified bond purchase plan must be non-forfeitable, a qualified bond purchase plan must, in order to conform to the requirements of section 401(a)(4) with respect to the early termination of the plan, restrict the contributions on behalf of any employee to the amount which could be allocated to him under paragraph (c) of § 1.401-4.

(e) *Definitions.* For purposes of this section and §§ 1.405-2 and 1.405-3—

(1) The term "employee" includes an employee as defined in section 401(c)(1) and paragraph (b) of § 1.401-10, and the term "employer" means the person treated as the employer of such individual under section 401(c)(4);

(2) The term "owner-employee" means an owner-employee as defined in section 401(c)(3) and paragraph (d) of § 1.401-10;

(3) The term "earned income" means earned income as defined in section 401(c)(2) and paragraph (c) of § 1.401-10; and

(4) The term "retirement bond" means a United States Retirement Plan Bond, as described in section 405(b) and Treasury Department Circular, Public Debt Series—No. 1-63.

§ 1.405-2 Deduction of contributions to qualified bond purchase plans.

(a) *In general.* An employer shall be allowed a deduction for contributions paid to or under a qualified bond purchase plan in the same manner and to the same extent as if such contributions were made to a trust described in section 401(a) which is exempt from tax

under section 501(a). A deduction will be allowed only for the taxable year in which the contributions are paid, or treated as paid, except as provided by section 404(a)(1), (3), and (7). For purposes of the deduction, a contribution is paid at the time the application for the bond is made and the full purchase price paid.

(b) *Rules for applying section 404.* If a qualified bond purchase plan is designed as a pension plan as defined in paragraph (b)(1)(i) of § 1.401-1, the limitations of section 404 applicable to qualified pension trusts shall apply. See §§ 1.404(a)-3 through 1.404(a)-7. Similarly, if a qualified bond purchase plan is designed as a profit-sharing plan as defined in paragraph (b)(1)(ii) of § 1.401-1, the limitations of section 404 applicable to qualified profit-sharing trusts shall apply. See §§ 1.404(a)-9 and 1.404(a)-10. In addition, if a qualified bond purchase plan designed as a pension plan covers some or all of the employees who are covered by a qualified profit-sharing plan established and maintained by the same employer, or if a qualified bond purchase plan which is designed as a profit-sharing plan covers some or all the employees who are also covered by a qualified pension or annuity plan established and maintained by the same employer, section 404(a)(7) is applicable. See § 1.404(a)-(13). Furthermore, if a qualified bond purchase plan covers employees some or all of whom are employees within the meaning of section 401(c)(1), the provisions of section 404(a)(8), (9), and (10) and 404(e) shall also apply.

(c) *Accrual method taxpayers.* In the case of a taxpayer using the accrual method of accounting, a contribution to a qualified bond purchase plan will be deemed paid on the last day of the year of accrual if—

(1) During the taxable year of accrual the taxpayer incurs a liability to make the contribution, the amount of which is accruable under section 461 for such taxable year, and

(2) Payment is in fact made no later than the time prescribed by the law for filing the return for the taxable year of accrual (including extensions thereof).

§ 1.405-3 Taxation of retirement bonds.

(a) *In general.* (1) As in the case of employer contributions under a qualified pension, annuity, profit-sharing, or stock bonus plan, employer contributions on behalf of his common-law employees under a qualified bond purchase plan are not includible in the gross income of the employees when made, and employer contributions on behalf of self-employed individuals are deductible as provided in section 405(c) and § 1.405-2. Further, an employee or his beneficiary does not realize gross income upon the receipt of a retirement bond pursuant to a qualified bond purchase plan or from a trust described in section 401(a) which is exempt from tax under section 501(a). Upon redemption of such a bond, ordinary income will be realized to the extent the proceeds thereof exceed the basis

(determined in accordance with paragraph (b) of this section) of the bond.

(2) In the event a retirement bond is surrendered for partial redemption and reissuance of the remainder, the person surrendering the bond shall be taxable on the proceeds received to the extent such proceeds exceed the basis in the portion redeemed. In such case, the basis shall be determined (in accordance with paragraph (b) of this section) as if the portion redeemed and the portion reissued had been issued as separate bonds.

(3) In the event a retirement bond is redeemed after the death of the registered owner, the amount taxable (as determined in accordance with subparagraph (1) of this paragraph) is income in respect of a decedent under section 691.

(4) The provisions of section 402(a)(2) are not applicable to a retirement bond. In general, section 402(a)(2) provides for capital gains treatment of certain distributions from a qualified trust which constitute the total distributions payable with respect to any employee. The proceeds of a retirement bond received upon redemption will not be entitled to such capital gain treatment even though the bond is received as a part of, or as the whole of, such a total distribution. Nor will such a bond be taken into consideration in determining whether the distribution represents the total amount payable by the trust with respect to an employee. Thus, a distribution by a qualified trust may constitute a total distribution payable with respect to an employee for purposes of section 402(a)(2) even though the trust retains retirement bonds registered in the name of such employee.

(b) *Basis.* (1) This paragraph is applicable in determining the basis of any retirement bond distributed pursuant to a qualified bond purchase plan or distributed by a trust qualifying under section 401. In the case of such a bond purchased for an individual at the time he is a common-law employee, the basis is that portion of the purchase price attributable to employee contributions. In the case of such a bond purchased for an individual at the time he is a self-employed individual, the basis shall be determined under subparagraph (3) of this paragraph.

(2) At the time a retirement bond is purchased, there shall be indicated on the application for the retirement bond whether the individual for whom the retirement bond is purchased is a common-law employee or a self-employed individual, and in the case of common-law employees the amount of the purchase price, if any, attributable to the employee's contribution. The answers to these questions will appear on the retirement bond, and when the retirement bond is purchased for a common-law employee, the basis for the retirement bond is presumed to be the amount of the purchase price which the retirement bond indicates was contributed by the employee.

(3)(i) Except as provided in subdivision (ii) of this subparagraph, for purposes of determining the basis of retire-

ment bonds purchased for an individual while he was a self-employed individual, all such bonds redeemed during a taxable year shall be considered in the aggregate as a single retirement bond. The basis of such retirement bonds shall be the difference between the aggregate of their face amounts and the lesser of:

(a) One half the aggregate of their face amounts, or

(b) The aggregate of the unused amounts allowed as a deduction under section 405(c) at the end of the taxable year (as determined in subparagraph (4) of this paragraph).

(ii) The basis of a retirement bond purchased for a self-employed individual which is redeemed after his death is the amount determined by multiplying the face amount of such retirement bond by a fraction—

(a) The numerator of which is the aggregate of the face amounts of all the bonds registered in the individual's name at his death which were purchased while he was a self-employed individual reduced by the aggregate of the unused amounts allowed as a deduction under section 405(c) at his death (as determined in subparagraph (4) of this paragraph), and

(b) The denominator of which is the aggregate of the face amounts of all such bonds.

(4) The aggregate of the unused amounts allowed as a deduction under section 405(c) at the end of any taxable year shall be an amount equal to the total of the amounts allowable for such taxable year, and the amounts allowed in all prior taxable years, as a deduction under section 405(c) for contributions used to purchase retirement bonds for the registered owner while he was a self-employed individual, reduced by an amount equal to the portions of the face amounts of retirement bonds redeemed in prior taxable years which were included in the registered owner's gross income.

(5) The application of the rule of subparagraphs (3) and (4) of this paragraph may be illustrated by the following examples:

Example (1). B, a self-employed individual, adopts a qualified bond purchase plan in 1963. During 1963 the plan purchased \$2,000 worth of retirement bonds in his name. As a result of overestimating his income for 1963 only \$400 was allowed B as a deduction pursuant to section 405(c). In 1964, prior to B's retirement in June of that year, the plan purchased a \$500 retirement bond in B's name for which a deduction was allowable pursuant to section 405(c) in the amount of \$250. B redeemed a retirement bond with a face amount of \$500 in September of 1964 and another with a face amount of \$500 in October of 1964. Of the proceeds received in 1964 from the redemption of the bonds, \$1,000 plus interest, B shall exclude from his gross income \$500 (face amount of the retirement bonds, \$1,000, less \$500, one-half the face amount, the latter being less than the aggregate of the unused amounts allowed as a deduction under section 405(c), \$250 allowable for the taxable year in which the bonds were redeemed plus \$400, the unused amounts allowed in prior taxable years, or \$650). The aggregate of the unused amounts allowed as a deduction under

section 405(c) shall be reduced by the amount so excluded (\$650—\$500=\$150). During the following year B redeems another retirement bond with a face amount of \$500. Of the proceeds received from the redemption of such retirement bond, \$500 plus interest, B shall exclude from his gross income \$350 (face amount of the retirement bond, \$500, less \$150, the aggregate of the unused amounts allowed as a deduction under section 405(c), the latter being less than one-half the face amount of the bond, \$250). The aggregate of the unused amounts allowed as a deduction under section 405(c) is reduced to zero (\$150—\$150=0). Upon redemption of the remaining retirement bonds registered in B's name, B shall exclude from his gross income with respect to such proceeds an amount equal to the face amounts of the bonds redeemed.

Example (2). C, a self-employed individual, participated in a qualified bond purchase plan during the years 1963 through 1966. The plan purchased in his name retirement bonds in the aggregate of \$10,000. C deducted \$4,000 from his gross income for the four years (\$1,000 for each year) with respect to the purchase of such retirement bonds. C retired in December of 1966 and during the following year redeemed one retirement bond with a face amount of \$1,000. C excluded from his gross income \$500 of the proceeds of the bond. C died without redeeming any of the remaining retirement bonds registered in his name. The basis of each remaining retirement bond shall be determined by multiplying the face amount of each retirement bond by \$5,500.

The numerator is the aggregate of the face amounts registered in C's name (as a self-employed individual) at his death, \$9,000, reduced by the aggregate of the unused amounts allowed as a deduction under section 405(c) at his death, \$3,500 (amounts allowed as a deduction under section 405(c), \$4,000, reduced by the portion of the face amount of the retirement bond redeemed by C which was included in C's gross income, \$500), or \$5,500. The denominator is the face amount of the retirement bonds registered in his name as a self-employed individual at his death, \$9,000.

[F.R. Doc. 63-3654; Filed, Apr. 5, 1963; 8:52 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 192]

OIL AND GAS LEASES

Proposal Regarding Rental Payments

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the act of February 25, 1920 (41 Stat. 437), as amended (30 U.S.C. 181 et seq.), it is proposed to amend 43 CFR Part 192 as set forth below.

The purpose of the amendments is to clarify the regulations pertaining to rentals payable on oil and gas leases.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Bureau of Land

Management, Washington 25, D.C., within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Paragraph (b) (3) of § 192.80 is amended and new paragraphs (d) and (e) are added as follows:

§ 192.80 Rentals.

(b) On leases wholly or partly within the known geologic structure of a producing oil and gas field:

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of \$2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and a minimum royalty as provided in § 192.81 shall be payable on the participating acreage.

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil and gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease.

(e) If, on the rental due date, less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

APRIL 1, 1963.

[F.R. Doc. 63-3597; Filed, Apr. 5, 1963; 8:45 a.m.]

National Park Service

[36 CFR Part 11]

INSIGNIA

Proposed Use of the "Arrowhead Symbol"

Basis and purpose. Inasmuch as the "Arrowhead Symbol" has been prescribed as the official insignia of the National Park Service of the Department of the Interior (27 F.R. 2486) notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by 62 Stat. 731, 18 U.S.C. 701, it is proposed to issue regulations, as set forth below to control and permit the manufacture, sale, or use of said symbol.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions or objections with respect to the proposed regulations to the National Park Service, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

Sec.

11.1 Definitions.

11.2 Noncommercial use.

11.3 Commercial use.

11.4 Power to revoke.

11.5 Penalties.

AUTHORITY: §§ 11.1 to 11.5 issued under Act of June 25, 1948, ch. 645, 62 Stat. 731; 18 U.S.C. 701.

§ 11.1 Definitions.

(a) The term "Arrowhead Symbol" as used in this part relates to the insignia of the National Park Service depicted in the official notice thereof which was authorized and approved on March 7, 1962 and published in the FEDERAL REGISTER (27 F.R. 2486).

(b) The term "Director" means the Director of the National Park Service, United States Department of the Interior, or person designated to act for him.

(c) The term "Commercial Use" as used in the regulations of this part refers to use of the "Arrowhead Symbol" on souvenirs or other items of merchandise presented for sale to the public by private enterprise operating either within or outside of areas of the National Park System.

(d) The term "Noncommercial Use" as used in the regulations of this part refers to non-governmental use of the "Arrowhead Symbol" other than that described in paragraph (c) of this section.

§ 11.2 Noncommercial use.

The Director may permit the reproduction, manufacture, sale and use of the "Arrowhead Symbol" for noncommercial purposes with or without charge under such conditions as will contribute to purposes of education and conserva-

tion as they relate to the program of the National Park Service. All other noncommercial use is prohibited.

§ 11.3 Commercial use.

The manufacture, reproduction, sale or use of the "Arrowhead Symbol" for commercial purposes is prohibited.

§ 11.4 Power to revoke.

Permission granted under this part by the Director may be rescinded by him at any time upon a finding that the use involved is injurious to the purpose of fostering public information in the field of conservation as associated with the National Park Service or for disregard of any limitations or terms contained in the permits.

§ 11.5 Penalties.

Whoever manufactures, sells or uses the "Arrowhead Symbol" in violation of the regulations of this part shall be subject to the penalties prescribed in section 701 of Title 18 of the United States Code.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

APRIL 1, 1963.

[F.R. Doc. 63-3598; Filed, Apr. 5, 1963;
8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1001, 1002, 1003, 1004, 1006, 1007, 1010, 1014, 1015, 1016]

[Docket Nos. AO-14 A36, AO-71 A45, AO-160 A27, AO-302 A10, AO-203 A18, AO-312 A5, AO-293 A8, AO-204 A18, AO-276 A7, AO-305 A10]

MILK IN CERTAIN MARKETING AREAS

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Market Administrator's Office, 205 East 42nd Street, New York 17, New York, beginning at 10:00 a.m., local time, on May 6, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the Greater Boston, Mass.; New York-New Jersey; Philadelphia, Pa.; Southeastern New England; Springfield, Mass.; Upper Chesapeake Bay; Washington, D.C.; Worcester, Mass.; Wilmington, Del.; and Connecticut marketing areas (hereinafter referred to as the Northeast orders).

The public hearing is for the purpose of receiving evidence with respect to the economic and emergency marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

In addition to such consideration of the specific proposals set forth below, the hearing will receive evidence on all aspects of pricing Class I (fluid) milk under each of the 10 marketing orders, including consideration of whether the respective market levels of Class I prices and relationships of such prices, one to another and to the general level of manufacturing milk prices in the Midwest, should remain unchanged or should be modified in the light of economic and emergency marketing conditions.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSALS TO AMEND EACH OF THE NORTHEAST ORDERS

Proposed by Bellows Falls Cooperative Creamery, Inc., Cabot Farmers Cooperative Creamery Co., Inc., Connecticut Milk Producers Association, Dairymen's League Co-operative Association, Inc., Eastern Milk Producers Co-operative Association, Inc., Grand Isle County Co-operative Creamery Association, Granite City Cooperative Creamery Association, Local Dairymen's Cooperative Association, Metropolitan Co-operative Milk Producers Bargaining Agency, Inc., Milton Cooperative Dairy Corporation, Modern Milk Marketing Association, Mutual Federation of Independent Co-operatives, Inc., Richmond Cooperative Association, Inc., St. Albans Cooperative Creamery, Inc., United Farmers of New England, Inc., White River Valley Dairies, Inc., Maryland and Virginia Milk Producers Association, Inc., Maryland Cooperative Milk Producers, Inc., and United Milk Producers Cooperative Association of New Jersey:

Proposal No. 1. Amend § 1002.40(e) of the New York-New Jersey order (and appropriate sections of the other nine Northeastern orders to assure the same result), for a period of one year, to provide that for milk that leaves, or is on hand at, the plant at which classification is determined in the form of butter or Cheddar, American Cheddar, Colby, washed curd or part skim Cheddar cheese, or is assigned to plant loss associated with such products, seasonal adjustments shall apply as specified in the following table in lieu of seasonal adjustments now specified in subparagraph (2):

When the weighted average percentage of Class I milk for the most recently available 12 months under Order 2 (designated below as alternative A) or under the 10 Northeastern orders combined (designated below as alternative B) is:

Alternate A: Less than 49.0 percent, 49.0 to 50.9 percent, 51 to 53.9 percent.
 Alternate B: Less than 56.4 percent, 56.4 to 57.3 percent, 57.4 to 60.3 percent.

Adjustments shall apply as follows:¹

Month	(Cents per hundredweight)		
January	-5	-1	+3
February	-5	-1	+3
March	-12	-8	-4
April	-12	-8	-4
May	-12	-8	-7
June	-12	-8	-6
July	-6	-2	+2
August	-6	0	+4
September	-6	0	+6
October	-6	0	+6
November	-6	0	+6
December	-6	0	+6

¹ These rates are considered tentative subject to possible further statistical refinement of the relationship between the 10 market average and New York-New Jersey.

Proposed by the State of Wisconsin:
Proposal No. 2. Non-fluid class receipts shall be priced to handlers at a price level of no less than the level established by the Minnesota-Wisconsin price series.

Proposed by the State of Minnesota and Land O'Lakes Creameries, Inc.:

Proposal No. 3. The Class III prices in the subject marketing areas should be established at a level equal to the Minnesota-Wisconsin Series for manufacturing milk as currently published by the U.S. Department of Agriculture.

Proposal No. 4. The Class I prices in the subject markets should be established by use of a fixed differential from the Class III prices, as proposed herein, by adding thereto an amount sufficient to call forth an adequate supply of pure and wholesome milk in the regulated marketing areas without limit or restriction on the production areas supplying the markets; and that the proposed system of Class I pricing should replace economic formula pricing, where presently used, consistent and in accordance with the Agricultural Marketing Agreement Act of 1937, as amended.

Proposed by Midland Cooperative Dairy Association:

Proposal No. 5. Separately price milk used in the manufacture of evaporated milk so that the price for this milk can be kept on a fair and comparable basis with the prices paid dairy farmers in the Middlewest, for milk used in the manufacture of evaporated milk.

PROPOSALS TO AMEND THE NEW YORK-NEW JERSEY ORDER

Proposed by Milk Dealers' Association of Metropolitan New York, Inc.; Sealtest Foods, Metropolitan Division of National Dairy Products Corp.; and New York State Milk Distributors Operating under Order No. 2 (except the Dairywomen's League):

Proposal No. 6. Amend the New York-New Jersey order to provide that whenever the utilization adjustment percentage (§ 1002.40(e)(9)) used in calculating the Class I-A price for any month from August through February is less than 96.0, the seasonal adjustment in the Class III price (§ 1002.40(e)(2)) for the month shall be eliminated.

Proposal No. 7. Eliminate the seasonal adjustment in the New York-New

Jersey Class III price for July (§ 1002.40(e)(2)).

Proposal No. 8. Establish a butter-cheese adjustment under the New York-New Jersey order in March and July of 3 cents per pound of butterfat and in April, May and June of 4 cents per pound of butterfat. (Definition of the butter-cheese adjustment and applicability the same as in Order No. 2 effective December 1, 1961, § 1002.43).

Proposed by Hudson-Mohawk Independent Milk Producers Cooperative, Inc., and Capitol District Can Milk Producers Cooperative, Inc.:

Proposal No. 9. In § 1002.42(c) change the rates in Column B for all zones up to and including 80 miles as follows:

Miles	Cents per cwt.
1-10	+49.0
11-20	+42.8
21-25	+41.6
26-30	+41.6
31-40	+35.4
41-50	+34.2
51-60	+28.0
61-70	+26.8
71-75	+20.6
76-80	+20.6

and add the following proviso after the colon: "Provided that the freight zone for plants located in the cities or townships of Albany, Colonie, Watervliet, Green Island, Cohoes, Schenectady, Waterford, Troy, and Rensselaer shall be 25 cents higher than the rate specified in Column B, and in the cities or townships of Clifton Park, Guiderland, New Scotland, Bethlehem, Coeymans, Glenville, Niskayuna, Rotterdam, Amsterdam, Brunswick, North Greenbush, Schodack, and East Greenbush shall be 20 cents higher than the rate specified in Column B and in the cities or townships of Syracuse, Manlius, DeWitt, Onondaga, Camillus, Solvay, Geddes and Salina shall be 5 cents higher than the rate specified in Column B."

Proposal No. 10. Amend § 1002.71(b) by adding at the beginning of each of subparagraphs (4) and (5) the words, "Except as provided in subparagraph (7)," and add as an additional subparagraph the following: "(7) For farms of producers whose milk is received at plants located in the cities or townships of Albany, Amsterdam, Bethlehem, Brunswick, Coeymans, Cohoes, Colonie, East Greenbush, Glenville, Green Island, Guiderland, New Scotland, Niskayuna, North Greenbush, Rensselaer, Rotterdam, Schenectady, Schodack, Troy, Waterford, Watervliet, the nearby differential zone shall be computed on the mileage basis provided in § 1002.42 except that the State Capitol building in Albany shall be considered the beginning point."

Proposal No. 11. Delete from § 1002.42 (d) the words, "the schedule in". Proposed by Chenango Valley Farmers' Co-operative Co., Inc.:

Proposal No. 12. Adjust the freight zone of all pool plants regulated under Federal Milk Marketing Order No. 2 as necessary so that each such pool plant will be scheduled with a freight zone differential identical with the assigned township differential now used in Order

No. 2 as it relates to the pricing of bulk tank milk.

PROPOSALS TO AMEND THE UPPER CHESAPEAKE BAY ORDER

Proposed by Maryland Cooperative Milk Producers, Inc.:

Proposal No. 13. Amend § 1016.50(a) of the Upper Chesapeake Bay order to provide that the price of Class I milk computed pursuant to subparagraphs (1) and (2) of this paragraph shall not be less than a Class I price determined in the following manner:

To the average price paid per hundred-weight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin adjusted to a 3.5 percent butterfat content by the Chicago 92 score butter price for the month times 0.120 for the preceding month add the following amounts:

\$1.82 for the months of March-June.
 \$2.27 for the months of July-February.

Proposed by Green Spring Dairy:
Proposal No. 14. Amend § 1016.50(a) of the Upper Chesapeake Bay order to provide for the pricing of Class I milk based on the application of a plus adjustment to the "average price for milk for manufacturing purposes, f.o.b., plants United States" adjusted to 3.5 percent butterfat basis. The plus adjustment is to be determined by relative production and utilization ratios within specified ranges. The formula would further provide for adjusting the plus adjustment in increments based on changes in a moving average production/utilization ratio.

Proposed by the Milk Marketing Orders Division, Agricultural Marketing Service:

Proposal No. 15. Make such changes in each of the 10 marketing agreements and orders as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the market administrators as listed below, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected:

New York-New Jersey—Dr. C. J. Blanford, Market Administrator, 205 East 42d Street, New York 17, N.Y.
 Boston, Mass.—Mr. Richard D. Aplin, Market Administrator, 230 Congress Street, Boston 10, Mass.
 Springfield, Mass.—Mr. Richard D. Aplin, Market Administrator, 145 State Street, Springfield 3, Mass.
 Worcester, Mass.—Mr. Richard D. Aplin, Market Administrator, 107 Front Street, Worcester 8, Mass.
 Connecticut—Mr. D. O. Hammerberg, Market Administrator, 1049 Asylum Avenue, Hartford, Conn.
 Philadelphia and Wilmington—Mr. L. S. Iverson, Market Administrator, 1528 Walnut Street, Philadelphia 2, Pa.
 Southeastern New England—Mr. Robert W. Cherry, Market Administrator, 57 Eddy Street, Providence 3, R.I.
 Upper Chesapeake Bay—Mr. E. Hickman Greene, Market Administrator, 20 East Susquehanna Avenue, Baltimore 4, Md.

Washington, D.C.—Mr. Edward L. St. Clair, Market Administrator, P.O. Box 9708, Rosslyn Station, Arlington, Va.

Signed at Washington, D.C., on: April 3, 1963.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 63-3632; Filed, Apr. 5, 1963;
8:52 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 8]

COLOR ADDITIVES

Caramel; Notice of Proposal to List for Food Use and Exempt From Certification

Notice is given that the Commissioner of Food and Drugs, on his own initiative, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706(d), 74 Stat. 402; 21 U.S.C.A. 376(d)), and under the authority delegated to him by the Secretary of Health, Education, and Welfare, proposes the listing and exemption from certification of the color additive caramel for use in coloring foods. All interested persons are hereby invited to present written views, comments, or objections regarding this proposal within 30 days from the date of publication of this notice in the *FEDERAL REGISTER*. Such comments should be submitted, preferably in quintuplicate, to the Hearing Clerk, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington 25, D.C.

It is proposed to amend Subpart D, Part 8, by adding thereto the following new section:

Subpart D—Listing of Color Additives for Food Use Exempt From Certification

§ 8.303 Caramel.

(a) *Identity.* (1) The color additive caramel is the amorphous dark-brown material resulting from the carefully controlled heat treatment of the food grade carbohydrates listed in this subparagraph (liquid caramel may be dehydrated): Cornstarch hydrolysates, sucrose, dextrose, invert sugar, molasses, malt syrup.

(2) The food grade acids, alkalis, and salts listed in this subparagraph may be employed to assist caramelization, in amounts consistent with good manufacturing practice.

(i) *Acids:* Phosphoric acid, sulfuric acid, sulfurous acid.

(ii) *Alkalis:* Ammonium hydroxide, potassium hydroxide, sodium hydroxide.

(iii) *Salts:* The ammonium, sodium, and potassium salts of carbonic, phosphoric, sulfuric, and sulfurous acids.

(3) In addition to the substances used to assist caramelization, the color additive may contain as diluents only those

substances which, if used in foods, are not food additives within the meaning of section 201(s) of the act; or, if they are food additives, are authorized for a specific use or uses under the provisions of Part 121 of this chapter.

(b) *Specifications.* Caramel conforms to the following specifications: Lead (Pb), not more than 10 parts per million. Arsenic (As), not more than 3 parts per million. Mercury (Hg), not more than 0.1 part per million.

(c) *Uses and restrictions.* Caramel may be used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods standardized pursuant to section 401 of the act, where the use of added color is not authorized.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirement of section 706(c) of the act.

Dated: April 1, 1963.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 63-3602; Filed, Apr. 5, 1963;
8:46 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 224]

[Docket 14418]

ACCESS TO AIRCRAFT FOR SAFETY PURPOSES; FREE TRANSPORTATION FOR CERTAIN FAA AND WEATHER BUREAU EMPLOYEES

Free Transportation for Additional FAA Employees

APRIL 3, 1963.

Notice is hereby given that the Civil Aeronautics Board has under consideration the proposed amendment and reissuance of Part 224 of the Economic Regulations. The amendment would authorize air carriers to provide free transportation to certain additional FAA employees.

The principal features of the proposed amendment are recited in the Explanatory Statement below and the amended and reissued Part 224 is set forth below. This regulation is proposed under authority of sections 204(a), 301-314, 403, 404, 601-610 and 701 of the Federal Aviation Act of 1958, 72 Stat. 743, 744-754, 758, 760, 775-780 and 781; 49 U.S.C. 1324, 1341-1355, 1373, 1374, 1421-1430 and 1441.

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D.C. All relevant matter in communications received on or before May 6, 1963, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 711, Universal Building,

1825 Connecticut Avenue NW., Washington, D.C.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

Explanatory Statement. Part 224 of the Economic Regulations presently requires air carriers to carry without charge authorized personnel of the Board and the Federal Aviation Agency performing in-flight inspection duties and also authorizes air carriers to carry without charge and on a limited basis certain personnel of the latter agency and of the United States Weather Bureau traveling in order to increase their familiarization with the problems affecting in-flight air traffic control, communications and weather forecast services.

The Federal Aviation Agency has requested the Board to enlarge the scope of this part by authorizing air carriers to provide free transportation to certain other personnel of the Federal Aviation Agency whose duties require repeated access to the cockpit of aircraft in-flight. These include key personnel who have overall responsibility for developing and executing the Agency's air carrier safety programs and who must be fully knowledgeable on in-flight practices, procedures and problems. In addition to the Administrator and his Deputies, these include Regional Assistant Administrators, Service Directors, and certain Division Chiefs. Authorization for free transportation has also been requested by FAA for personnel assigned to specific research and developmental projects, portions of which can most effectively be pursued within the flight deck environment.

It is apparent that the important responsibilities of the Federal Aviation Agency for air safety under Titles III and VI of the Federal Aviation Act of 1958 cannot be performed adequately and efficiently without a thorough knowledge on the part of top level officials of the agency of the problems confronting those who operate the aircraft. It is also apparent that certain research and development projects relating to air safety require a familiarity by FAA employees involved with the problems and conditions in the cockpit of aircraft during flight. It is important therefore that the personnel of FAA with these responsibilities and duties have the opportunity to study actual flight conditions and observe the flight crews of aircraft at work. In accordance with the request of the Federal Aviation Agency we propose, therefore, to grant the air carriers authority to provide free transportation to these classes of FAA personnel for the purposes indicated.

In order to assure that the free transportation authorized will be kept to a reasonable level, we have closely defined the classes of FAA personnel contemplated and included a requirement that such persons furnish the carrier a statement signed by the Administrator, a Deputy Administrator or a Regional Assistant Administrator indicating that the specific transportation requested is for one of the specified purposes and is essential to the effective prosecution of

Federal Aviation Agency programs. As in the case of free transportation presently authorized for familiarization of traffic controllers and aircraft communicators of FAA and forecasters of the Weather Bureau, the proposed amendment limits the transportation authorized to one round-trip flight per year for the same individual on the same carrier unless requests for additional flights are accompanied by a statement signed by specified officials of FAA or their designees that the additional flights are necessary for the effective prosecution of FAA programs.

In addition, we propose to rearrange, restate and shorten various other provisions of the rule for purposes of clarity and simplification. No substantive changes in the rule are intended thereby.

Sec.

224.1 Safety inspectors.

224.2 Other Federal Aviation Agency personnel and aviation weather forecasters.

224.3 Requests for access to aircraft and free transportation.

224.4 Responsibility of the Federal Aviation Agency and the Weather Bureau.

§ 224.1 Safety inspectors.

Every air carrier shall carry, without charge, on any aircraft which it operates any duly authorized official or employee of the Board or of the Federal Aviation Agency who has been assigned to the duty of inspecting during flight such aircraft, its engines, propellers, appliances, route facilities, operational procedures or airman competency.

§ 224.2 Other Federal Aviation Agency personnel and aviation weather forecasters.

(a) Any air carrier may carry without charge on any aircraft which it operates any traffic controller or aircraft communicator of the Federal Aviation Agency or any aviation weather forecaster of the Weather Bureau (including supervising officers of such persons) for the purpose of more fully and adequately acquainting such persons with the problems affecting in-flight use of air traffic control and communications and weather forecast services provided by the U.S. Government.

(b) Any air carrier may carry without charge (1) officials in key positions within the Federal Aviation Agency whose access to the cockpit of aircraft is required to permit them to obtain information on in-flight practices, procedures or problems which information is necessary for the performance of their overall responsibilities for developing and executing air carrier safety programs, and (2) personnel of the Federal Aviation Agency involved in specific research and developmental projects (including supervising officers of such persons) whose access to the cockpit of aircraft in-flight is essential to the completion of such projects.

(c) No request for free transportation under this section shall be made for the same individual upon any one air carrier more than once (round-trips are regarded as one trip for the purposes of this section) in each calendar year unless the request for such additional transportation is accompanied by the statement in writing prescribed in § 224.3(d).

§ 224.3 Requests for access to aircraft and free transportation.

Access to aircraft and free air transportation shall not be granted to persons eligible under this part unless the following conditions are complied with:

(a) The person to be transported shall present to the appropriate agents of the air carrier credentials indicating that he is entitled to request access to aircraft or free transportation and signed by the Chief, Officer of Administration, Civil Aeronautics Board, the Administrator of the Federal Aviation Agency or the Chief, Weather Bureau, or any person they may designate and signed also by the person presenting such credentials;

(b) The person to be transported shall deliver to the appropriate agents of the air carrier, in duplicate, a properly executed "Request for Access to Aircraft or Free Transportation" (U.S. Government Standard Form No. 160).

(c) In the case of free transportation authorized under § 224.2(b), the person to be transported shall present to the appropriate agents of the air carrier a statement signed by the Administrator, a Deputy Administrator, or a Regional Assistant Administrator that free transportation of the person named, between the points designated and on the type of aircraft specified therein, is solely for one of the purposes specified in § 224.2 (b) and is essential to the effective prosecution of Federal Aviation Agency programs.

(d) When any free transportation is requested pursuant to § 224.2 and involves more than one free trip within a calendar year by the same individual on the same carrier, the person to be transported shall, at the time of performance of each of such additional trips, present to the appropriate agents of the air carrier a statement in writing by the Administrator of the Federal Aviation Agency, or the Chief, Weather Bureau or any persons they may designate, that the additional trip or trips by the person named, between the points designated and on the type of aircraft specified therein, is essential to the effective prosecution of Agency or Weather Bureau programs.

(e) The air carrier shall insert the tariff value of the transportation to be furnished on each "Request for Access to Aircraft or Free Transportation", shall retain one copy of each such request, and on or before the 10th day of each month each air carrier shall forward one copy of all such requests received by it during the second preceding calendar month to

the Bureau of Economic Regulation, Civil Aeronautics Board, Washington 25, D.C.

§ 224.4 Responsibility of the Federal Aviation Agency and the Weather Bureau.

With regard to access to aircraft and free transportation of the persons described in §§ 224.1 and 224.2, the Federal Aviation Agency and the Weather Bureau, shall be responsible for:

(a) The issuance of proper credentials for their respective eligible personnel; and

(b) The promulgation of such internal rules and regulations as may be required.

[F.R. Doc. 63-3619; Filed, Apr. 5, 1963; 8:50 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-WA-3]

POSITIVE CONTROL AREAS

Designation

Correction

In F.R. Doc. 63-3123, appearing at page 2964 of the issue for Tuesday, March 26, 1963, the area description of positive control areas contained numerous errors. The corrected description is set forth below:

Beginning at latitude 40°45'00" N., longitude 119°35'00" W.; thence to latitude 41°50'00" N., longitude 119°52'00" W.; thence to latitude 42°12'00" N., longitude 119°10'00" W.; thence to latitude 43°13'00" N., longitude 119°45'00" W.; thence to latitude 44°00'00" N., longitude 119°20'00" W.; thence to latitude 45°05'00" N., longitude 118°15'00" W.; thence to latitude 45°30'00" N., longitude 117°30'00" W.; thence to latitude 45°30'00" N., longitude 115°45'00" W.; thence to latitude 45°30'00" N., longitude 115°00'00" W.; thence to latitude 45°20'00" N., longitude 115°00'00" W.; thence to latitude 45°20'00" N., longitude 107°45'00" W.; thence to latitude 43°50'00" N., longitude 107°45'00" W.; thence to latitude 43°47'10" N., longitude 106°31'00" W.; thence to latitude 43°30'00" N., longitude 106°30'00" W.; thence to latitude 43°00'00" N., longitude 107°00'00" W.; thence to latitude 42°40'00" N., longitude 107°05'00" W.; thence to latitude 42°00'00" N., longitude 106°15'00" W.; thence to latitude 41°05'00" N., longitude 106°10'00" W.; thence to latitude 40°45'00" N., longitude 109°35'00" W.; thence to latitude 40°11'00" N., longitude 110°22'00" W.; thence to latitude 39°39'00" N., longitude 110°39'00" W.; thence to latitude 38°59'00" N., longitude 111°07'00" W.; thence to latitude 38°26'00" N., longitude 115°34'30" W.; thence to latitude 38°00'00" N., longitude 114°57'00" W.; thence to latitude 37°20'00" N., longitude 114°00'00" W.; thence to latitude 36°07'00" N., longitude 114°57'00" W.; thence to latitude 36°00'00" N., longitude 116°38'00" W.; thence to latitude 37°12'00" N., longitude 117°20'00" W.; thence to latitude 37°12'00" N., longitude 118°35'00" W.; thence to latitude 38°14'00" N., longitude 118°35'00" W.; thence to latitude 39°35'00" N., longitude 119°15'00" W.; thence to the point of beginning.

Notices

DEPARTMENT OF STATE

Agency for International Development
[Delegation of Authority No. 26]

ASSISTANT ADMINISTRATOR FOR LATIN AMERICA AND U.S. COORDINATOR, ALLIANCE FOR PROGRESS

Delegation of Authority To Negotiate, Execute and Implement a Participating Agency Agreement

Pursuant to the authority delegated to the Administrator for the Agency for International Development (A.I.D.) by Delegation of Authority 104, from the Acting Secretary of State, dated November 3, 1961, I hereby delegate to the Assistant Administrator for Latin America and U.S. Coordinator, Alliance for Progress, authority to negotiate, execute and implement on behalf of A.I.D. a participating Agency Agreement between A.I.D. and the Inter-American Geodetic Survey (IAGS) providing that the IAGS shall undertake a project which shall include making a geodetic survey, mapping and identifying resources in Uruguay, the expenses of which will be financed by IAGS with the exception of \$12,500 from A.I.D. for transporting personnel. This authority may be redelegated to the Director, USAID/Uruguay.

Dated: March 18, 1963.

FRANK M. COFFIN,
Acting Administrator.

[F.R. Doc. 63-3612; Filed, Apr. 5, 1963; 8:49 a.m.]

DIRECTOR, UNITED STATES A.I.D. MISSION TO URUGUAY

Redelegation of Authority To Negotiate, Execute and Implement a Participating Agency Agreement

Pursuant to the March 18, 1963, Delegation of Authority by the Administrator for the Agency for International Development (A.I.D.), I hereby redelegate to the Director, United States A.I.D. Mission to Uruguay, authority to negotiate, execute and implement on behalf of A.I.D. a participating Agency Agreement between A.I.D. and the Inter-American Geodetic Survey (IAGS) providing that the IAGS shall undertake a project which shall include making a geodetic survey, mapping and identifying resources in Uruguay, the expenses of which will be financed by IAGS with the exception of \$12,500 from A.I.D. for transporting personnel.

Dated: March 22, 1963.

TEODORO MOSCOSO,
U.S. Coordinator,
Alliance for Progress.

[F.R. Doc. 63-3613; Filed, Apr. 5, 1963; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

ADJUSTMENTS IN MAXIMUM LEVEL OF IMPORTS, PUERTO RICO

Finished Products Other Than Residual Fuel Oil To Be Used as Fuel

The maximum level of imports into Puerto Rico of finished products, other than residual fuel oil to be used as fuel, established by Presidential Proclamation 3279, as amended, is modified pursuant to paragraph (d) of section 2 of the Proclamation to permit, during the period January 1, 1963 through June 30, 1963, an increase of 10,000 barrels in the imports of asphalt to meet the increased demand in Puerto Rico.

All non-Governmental holders of allocations of imports of finished products, other than residual fuel oil to be used as fuel, into Puerto Rico, have been canvassed with respect to their interest in supplying the increased requirement. With the exception of the Shell Oil Companies all others have stated that they have no interest. Accordingly, the allocation made for the period mentioned above to the Shell Oil Companies will be increased to permit them to import into Puerto Rico an additional 10,000 barrels of asphalt.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 1, 1963.

[F.R. Doc. 63-3623; Filed, Apr. 5, 1963; 8:50 a.m.]

DEPARTMENT OF THE TREASURY

Coast Guard

[CGFR 63-17]

NEW LONDON HARBOR

Closed to Navigation During Launching of USS Daniel Webster

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Order 120 dated July 31, 1950 (15 F.R. 6521) and Executive Order 10173, as amended, by Executive Orders 10277 and 10352, I hereby affirm for publication in the FEDERAL REGISTER the order of R. M. Ross, Rear Admiral, United States Coast Guard, Commander, Third Coast Guard District, who has exercised authority as District Commander, such order reading as follows:

SPECIAL NOTICE—NEW LONDON HARBOR

Pursuant to the request of the Commander, Submarine Force, U.S. Atlantic Fleet, U.S. Navy, and acting under the authority of the Act of June 15, 1917 (40 Stat. 220), as amended, and the regulations in Part 6, Chapter 1, Title 33, Code of Federal Regulations, I hereby order that the waters of New London Harbor, New London, Con-

necticut, between the latitudes of 41 degrees 20 min. 32 sec. North and 41 degrees 21 min. 03 sec. North, be closed to all persons and vessels on Saturday, 27 April 1963, from 11:00 a.m. eastern standard time, until the "USS Daniel Webster" is made fast to the wetdock at the Electric Boat Division of the General Dynamics Corporation, Groton, Connecticut. The launching of the "USS Daniel Webster" is scheduled for 12:00 noon eastern standard time, on Saturday, 27 April 1963. The Northern and Southern limits of this area will be marked by ranges located on the eastern shore. Coast Guard vessels will be anchored off these ranges between the shore line and the main ship channel.

All persons and vessels are directed to remain outside of the closed area. This order will be enforced by the Captain of the Port, New London, Connecticut, and by U.S. Coast Guard vessels under his command. The aid of other Federal, State and Municipal agencies may be enlisted to assist in the enforcement of this order.

Penalties for violation of the above order: Section 2, Title II of the Act of June 15, 1917, as amended, 50 U.S.C. 192, provides as follows:

If any owner, agent, master, officer or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title * * * Or if any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than \$10,000.

Dated: March 29, 1963.

D. MCG. MORRISON,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 63-3611; Filed, Apr. 5, 1963; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-148]

DELTA STEAMSHIP LINES, INC.

Notice of Application and of Hearing

Notice is hereby given of the application of Delta Steamship Lines, Inc., for written permission of the Deputy Maritime Administrator, under section 805(a) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1223, for its owned vessel, the "SS Del Alba," which is under time charter to Seasons Navigation Co./American Clipper Line for a period of about two to about four months from February 19, 1963, to permit Seasons Navigation Co./American Clipper Line to employ the "SS Del Alba" for the carriage of bulk raw sugar from a port or ports in Hawaii for discharge at one or more United States Gulf ports, with the option of discharging at one or two United States Atlantic Coast

ports. Loading days are set for approximately May 1-2, 1963, and the vessel should reach its first United States discharge port about May 26, 1963.

This application may be inspected by interested parties in the Hearing Examiners' Office, Maritime Subsidy Board/Maritime Administration.

A hearing on the application has been set for April 17, 1963, at 10:00 a.m., e.s.t., in Room 4519, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on April 15, 1963, notify the Secretary, Maritime Subsidy Board/Maritime Administration in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Subsidy Board/Maritime Administration, petitions for leave to intervene received after the close of business on April 15, 1963, will not be granted in this proceeding.

Dated: April 5, 1963.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 63-3705; Filed, Apr. 5, 1963;
10:56 a.m.]

Office of the Secretary

HAROLD J. VORZIMER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the past six months.

- A. Deletions: no change.
- B. Additions: no change.

This statement is made as of March 12, 1963.

HAROLD J. VORZIMER.

APRIL 3, 1963.

[F.R. Doc. 63-3617; Filed, Apr. 5, 1963;
8:50 a.m.]

[Dept. Order 87 (Rev.)]

COAST AND GEODETIC SURVEY

Organization and Function

The following order was issued by the Secretary of Commerce on March 26, 1963. This material, together with the Organization and Function Supplement to Department Order No. 87 (Revised) of March 26, 1963, supersedes the material appearing in 25 F.R. 6991-6993 of July 22, 1960.

SECTION 1. Purpose. The purpose of this order is to delegate authority to the Director and to describe the general

functions of the Coast and Geodetic Survey.

SEC. 2. General. .01 The Coast and Geodetic Survey was established by an Act of Congress, February 10, 1807 (2 Stat. 413). Public Law 373, approved August 6, 1947, as amended by Public Law 86-409, approved April 5, 1960, (61 Stat. 787 and 74 Stat. 16; 33 U.S.C. Chapter 17), defines the present functions and duties of the Coast and Geodetic Survey. The Coast and Geodetic Survey is hereby continued as a primary organization unit of the Department of Commerce.

.02 The Coast and Geodetic Survey is headed by a Director, who is assisted by a Deputy Director, each of whom is appointed by the President, with the advice and consent of the Senate.

.03 In the absence of the Director, the Deputy Director will perform the duties of the Director, with the title of Acting Director. In the absence of both the Director and the Deputy Director, the person designated by written orders of the Director will perform the duties of the Director, with the title of Acting Director. In the event of circumstances or an emergency simultaneously resulting in the death or incapacity of the Director, the Deputy Director, and persons designated to act in their absence, the senior commissioned officer on active duty at bureau headquarters shall temporarily perform the duties of Director with the title of Acting Director.

SEC. 3. Delegation of authority. .01 Pursuant to the authority vested in the Secretary of Commerce by Reorganization Plan No. 5 of 1950, and subject to such policies and directives as the Secretary of Commerce or the Assistant Secretary of Commerce for Science and Technology may prescribe, the Director, Coast and Geodetic Survey, is hereby delegated the authority vested in the Secretary under Title 33, Chapter 17, U.S. Code, or under any other existing or subsequent legislation with respect to surveying, cartography, oceanography, and terrestrial and space investigations, including research and development activities, within the special competence of the Coast and Geodetic Survey.

.02 The Director may redelegate his authority to appropriate officials of the Coast and Geodetic Survey, subject to such conditions in the exercise of such authority as he may prescribe.

SEC. 4. General functions. The general functions of the Coast and Geodetic Survey are to provide:

1. Charts and related information for the safe navigation of marine and air commerce;
2. Basic geodetic control data for surveying, engineering, cartographic, scientific, and defense purposes; and
3. Geophysical, astrophysical, and oceanographic data for charting, engineering, scientific, and defense purposes.

SEC. 5. Organization and assignment of functions. An Organization and Function Supplement to this order, prescribing the organization and assignment of functions within the Coast and Geodetic Survey, shall be developed and issued by the Director, with the approval

of the Assistant Secretary for Science and Technology and the Assistant Secretary for Administration.

SEC. 6. Saving provision. All rules, regulations, orders, certificates, and delegations of authority issued by or relating to the Coast and Geodetic Survey or any official thereof shall remain in effect until specifically revoked or amended by proper authority.

Effective date: March 26, 1963.

[SEAL] HERBERT W. KLOTZ,
Assistant Secretary for
Administration.

[F.R. Doc. 63-3609; Filed, Apr. 5, 1963;
8:48 a.m.]

[Dept. Order 87 (Rev.)]

COAST AND GEODETIC SURVEY

Organization and Function

This material, together with Department Order No. 87 (Revised) of March 26, 1963, supersedes the material appearing at 25 FR 6991-6993 of July 22, 1960.

SECTION 1. Purpose. The purpose of this Organization and Function Supplement is to prescribe the organization and to assign functions within the Coast and Geodetic Survey.

SEC. 2. Organization. The Coast and Geodetic Survey shall consist of the following organization units:

1. Office of the Director:
Director,
Deputy Director,
Program Planning Coordination Staff,
International Technical Cooperation Staff.
2. Office of Oceanography:
Operations Division,
Facilities Division,
Marine Data Division.
3. Office of Physical Sciences:
Geodesy Division,
Geomagnetism Division,
Photogrammetry Division,
Seismology Division,
Electronic Computing Division.
4. Office of Cartography:
Nautical Chart Division,
Aeronautical Chart Division,
Reproduction Division,
Distribution Division.
5. Office of Research and Development.
6. Office of Administration:
Budget and Finance Division,
Administrative and Technical Services Division,
Personnel and Safety Division,
Management and Audit Division,
Instrument Division.
7. Field Organization:
District Offices,
Magnetic and Seismological Observatories and Laboratories,
Latitude Observatories,
Field Parties, including Vessel Parties.
Geodetic,
Gravity,
Magnetic,
Oceanographic,
Photogrammetric,
Seismological,
Coast Pilot.

Sec. 3. Functions of the Office of the Director. .01 The Director determines policies, approves programs of the bureau, and is responsible for the general planning, direction, coordination, and results of Coast and Geodetic Survey operations.

.02 The Deputy Director shall serve as the principal adviser and assistant to the Director in the general operation of the bureau, assumes direction of the bureau in the Director's absence, and exercises direct supervision over the district offices, the officer personnel activities, and the training of foreign students.

.03 The Program Planning Coordination Staff shall provide advice and assistance to the Director and the Deputy Director, and develop, recommend, and coordinate long-range plans and policies for the efficient execution of technical projects and programs, through the fullest utilization of bureau resources.

.04 The International Technical Cooperation Staff shall administer the training of foreign nationals under the international technical cooperation programs in those activities conducted by the bureau; cooperate with the Agency for International Development, Department of State, and United Nations Educational, Scientific and Cultural Organization; and represent the Department at national and international conferences pertaining to the cartographic training program.

Sec. 4. Functions of the Office of Oceanography. The Office of Oceanography shall conduct a broad and comprehensive program of collecting an analyzing oceanographic data to obtain a better understanding of the static and dynamic properties of the ocean and to disseminate such knowledge for application in charting, scientific, and defense endeavors. More particularly, the office shall plan, coordinate, and direct oceanographic surveys and related combined operations and supervise the analysis and processing of the resulting data; compile and publish tide and tidal current tables, tidal current charts, Coast Pilots, sea water temperature and density summaries, and other related reports, for charting, navigation, engineering, and scientific purposes; operate, jointly with the Office of Physical Sciences, the seismic sea wave warning system; study and investigate the interrelationship of oceanic environment and meteorological phenomena; provide the operating facilities, including ships and smaller vessels, ships' bases, and tide stations, required for the collection of oceanographic data; and maintain liaison with Government agencies and civil interests concerning oceanography and related matters. Through its divisions, the office conducts research in accordance with the plans and assignments of the bureau's over-all research and development program.

Sec. 5. Functions of the Office of Physical Sciences. The Office of Physical Sciences shall provide geodetic, geophysical, and cartographic data for charting, engineering, scientific, and defense purposes. More particularly, the office shall plan, coordinate, and direct the main-

tenance, adjustment, observations, and extensions of the geodetic control network including astronomic observations and gravity surveys; plan and direct the recording and investigation of magnetic and seismological phenomena; photogrammetric mapping, the operation of the seismic sea wave warning system in collaboration with the Office of Oceanography, investigations relating to astrophysics and astrophysics, the operation of latitude observatories, magnetic and seismological observatories and laboratories, and seismological stations; plan and direct the operation of automatic data processing facilities, and office processing and analysis of survey data, including compilation, publication, and distribution of geodetic control data, compilation of planimetric and topographic maps and airport obstruction charts, compilation and publication of magnetic and seismological reports, and compilation and publication of other reports as required; and maintain liaison with Government agencies, foreign countries, and civil interests concerning geodetic, geophysical, and cartographic matters. Through its divisions, the office conducts research in accordance with the plans and assignments of the bureau's over-all research and development program.

Sec. 6. Functions of the Office of Cartography. The Office of Cartography shall provide charts and related data for marine and air navigation to meet civil requirements and defense needs. More particularly, the office shall plan, coordinate, and direct the compilation and maintenance of nautical and aeronautical charts, the operation of a chart reproduction plant, and the administration of chart distribution facilities; and maintain liaison with Government agencies and civil interests concerning cartographic matters. Through its divisions, the office conducts research in accordance with the plans and assignments of the bureau's over-all research and development program.

Sec. 7. Functions of the Office of Research and Development. The Office of Research and Development shall plan, coordinate, and direct the bureau's over-all basic and applied research and development program in fields of interest to or within the competence of the Coast and Geodetic Survey. (This includes, but is not limited to, research and development in cartography, oceanography, geodesy, geomagnetism, seismology, photogrammetry, gravimetry, astronautics, and related supporting fields such as mathematics, astronomy, physics, astrophysics, chemistry, photography, electronics, optics, mechanics, automatic data processing, survey techniques, instrumentation, and ship and observatory construction and operation.) The office shall also develop, apply, and disseminate resulting findings, theories, and hypotheses; and maintain liaison with Government agencies and civil interests concerning research in which the bureau has an interest.

Sec. 8. Functions of the Office of Administration. The Office of Administration shall provide the bureau with ad-

ministrative and technical services for all its activities. More particularly, the office shall plan, coordinate, and direct budget and fiscal activities; civil service personnel activities; organization, management, and internal audit activities; procurement and supply activities; construction and maintenance of instruments and equipment; and library and map reference services. Through its divisions, the office conducts research in accordance with the plans and assignments of the bureau's over-all research and development program.

Sec. 9. Functions of the field organization. .01 District Offices shall supervise and direct all fixed bureau functions located in their respective districts except magnetic and seismological observatories and laboratories; process field records as required, including geodetic data, oceanographic data, and photogrammetric data; make studies and recommendations for new surveys involving and construction and maintenance of nautical and aeronautical charts, and the collection of geodetic control data, magnetic and seismological data, and airport obstruction data; maintain liaison with Federal, state, and local agencies, and private organizations and individuals, for the purpose of collecting and disseminating chart data and geodetic data; maintain a library of charts and other bureau publications for reference purposes; and supervise the establishment and inspection of agents selling bureau charts and publications.

.02 Magnetic and Seismological Observatories and Laboratories shall record magnetic and seismological data; design, develop, test, and calibrate instruments; conduct research in geomagnetism and seismology; and serve as a part of the seismic sea wave warning system.

.03 Latitude Observatories shall make astronomic observations for determining the variation of latitude.

.04 Field Parties shall make observations and collect and record field survey data in the geodetic, geophysical, oceanographic, and cartographic disciplines.

Effective date: March 26, 1963.

[SEAL]

HERBERT W. KLOTZ,
Assistant Secretary for
Administration.

COAST AND GEODETIC SURVEY—FIELD
ORGANIZATION

FIELD ORGANIZATION AND LOCATION

District Offices:

Los Angeles District, Los Angeles, Calif.
San Francisco District, San Francisco, Calif.
Tampa District, Tampa, Fla.
Honolulu District, Honolulu, Hawaii.
New Orleans District, New Orleans, La.
Baltimore District, Baltimore, Md.
Boston District, Boston, Mass.
Kansas City District, Kansas City, Mo.
New York District, New York, N.Y.
Portland District, Portland, Oreg.
Fort Worth District, Fort Worth, Tex.
Norfolk District, Norfolk, Va.
Seattle District, Seattle, Wash.

Observatories:

Barrow Magnetic Observatory, Barrow, Alaska.
College Magnetic and Seismological Observatory, College, Alaska.
Sitka Magnetic and Seismological Observatory, Sitka, Alaska.

Byrd Station Magnetic and Seismological Observatory, Byrd Station, Antarctica.
South Pole Station Magnetic and Seismological Observatory, South Pole Station, Antarctica.

Tucson Magnetic and Seismological Observatory, Tucson, Ariz.

Ukiah Latitude Observatory, Ukiah, Calif.

Guam Magnetic and Seismological Observatory, Guam, Mariana Islands.

Honolulu Magnetic and Seismological Observatory, Ewa, Oahu, Hawaii.

Gaithersburg Latitude Observatory, Gaithersburg, Md.

San Juan Magnetic and Seismological Observatory, Santurce, P.R.

Fredericksburg Magnetic Observatory and Laboratory, Corbin, Va.

Seismological Laboratory, Albuquerque, N. Mex.

[F.R. Doc. 63-3610; Filed, Apr. 5, 1963; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 13777; Order No. E-19455]

JOINT CONFERENCE 3-1 OF INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Specific Commodity Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 3d day of April 1963.

An agreement adopted by Joint Conference 3-1 of the International Air Transport Association relating to specific commodity rates, Docket 13777, Agreement C.A.B. 17004, R-1, R-3 and R-4.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conference 3-1 of the International Air Transport Association (IATA). The agreement was adopted at the eighth meeting of the San Francisco Specific Commodity Rates Board, held in San Francisco on January 9, 1963, and by unopposed notice to the carriers, pursuant to the provisions of Resolution 590 (Commodity Rates Board).

In general, in addition to extending the validity of certain specific commodity rates currently in effect, the agreement cancels some, amends the descriptions of others, and names an additional rate, as follows:

Item 8420—Films and parts thereof—

Rate: 160 cents per kilogram, minimum weight 45 kilograms, from Singapore to Honolulu.

The Board acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the resolutions as adopted at the San Francisco Commodity Rates Board meeting, and Resolutions SFO Board/9/JT31-Rates 257 and SFO Board/9/JT31-Rates 253, which are incorporated in Agreement C.A.B. 17004, R-1, R-3 and R-4, to be adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered:

Accordingly, it is ordered, That Agreement C.A.B. 17004, R-1, R-3 and R-4, is approved, provided that such approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication.

Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and nineteen copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 63-3618; Filed, Apr. 5, 1963; 8:50 a.m.]

[Docket No. 14412]

HURONIAN AIR SERVICE LTD.

Notice of Hearing

Application of Huronian Air Service Limited for a foreign air carrier permit, issued pursuant to section 402 of the Federal Aviation Act of 1958, as amended, to perform operations of a casual, occasional or infrequent nature in common carriage from Canada into the United States.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing on the above-entitled application is assigned to be held on April 16, 1963, at 10:00 a.m. e.s.t., in Room 1029, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., April 3, 1963.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 63-3620; Filed, Apr. 5, 1963; 8:50 a.m.]

[Docket No. 14413]

CARL MILLARD LTD.

Notice of Hearing

Application of Carl Millard Limited for a foreign air carrier permit, issued pursuant to section 402 of the Federal Aviation Act of 1958, as amended, to perform operations of a casual, occasional or infrequent nature in common carriage from Canada into the United States.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing on the above-entitled application is assigned to be held on April 16, 1963, at 11:00 a.m. e.s.t., in Room 1029, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., April 3, 1963.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 63-3621; Filed, Apr. 5, 1963; 8:50 a.m.]

FEDERAL AVIATION AGENCY

[OE Docket No. 63-SW-1]

LOYOLA UNIVERSITY

Determination of Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal for aeronautical comment and has conducted a study to determine its effect upon the safe and efficient utilization of airspace.

The Loyola University, New Orleans, Louisiana, proposes to construct a television antenna structure near Gretna, Louisiana, at latitude 29°54'22.5" N, longitude 90°02'23.3" W. The over-all height of the structure would be 1549 feet above mean sea level (1549 feet above ground).

A similar proposal by Loyola University for a tower 1049 feet above mean sea level (1049 feet above ground) at the above location was considered in Aeronautical Study No. SW-OE-2509. As a result of the study, a Notice of Determination of No Hazard was issued in Fort Worth, Texas, on June 20, 1962, and amended on September 14, 1962.

The proposed structure would be located approximately 5.5 miles north/northwest of the New Orleans Naval Air Station; approximately 13.5 miles east/southeast of the New Orleans International Airport; approximately 9 miles south of the New Orleans Municipal Airport; approximately 2.8 miles south of off-airway direct route 116d; and approximately 8.4 miles east of off-airway direct route 175d.

At this location and height the increase in minimum flight altitudes which would be required to accommodate the proposed structure would have an adverse effect upon four of the five standard instrument approach procedures for the New Orleans International Airport. These are as follows:

1. It would require an increase from 2000 feet to 2500 feet in the missed approach altitude on the standard instrument approach procedures AL-609-ADF-1 and AL-609-ILS-RWY 10.
2. It would require an increase from 2000 feet to 2500 feet in the procedure turn altitude on standard instrument approach procedure AL-609-ADF-2.
3. It would require an increase from 2000 feet to 2500 feet in the procedure turn altitude and an increase from 1500 feet to 2000 feet in the final approach altitude over the Bridge Intersection on the standard instrument approach procedure AL-609-ILS-RWY 28. The increase in the Bridge Intersection crossing altitude would result in the loss of this important ILS backcourse approach since the higher crossing altitude would require a descent of 1300 feet in the 1.8

nautical miles between the Bridge and the Kennen Intersections which would be an excessive descent ratio of approximately 8:1.

The proposed structure would require an increase from 1500 feet to 1700 feet in the minimum en route altitude on the segment of off-airway direct route 175d between New Orleans VORTAC and the Sally, Louisiana, Intersection, and an increase from 2000 feet to 2500 feet in the minimum en route altitude on the segment of off-airway direct route 116d between New Orleans VORTAC and the Violet Intersection. This would have no substantial adverse effect upon off-airway direct route 175d; however, the increase in MEA on off-airway direct route 116d would result in the loss of the cardinal altitude of 2000 feet.

It would require an increase in the minimum radar vector altitude from 2000 feet to 2500 feet within a three mile radius and an increase from 1500 feet to 2000 feet within a three to five mile radius of the proposed structure.

It would require aircraft departing Runway 31 of the New Orleans Naval Air Station and proceeding in a northerly direction which would overlie the proposed structure to alter course during climb-out in order to obtain adequate vertical or horizontal obstruction clearance from the proposed structure. The present acceptable minimum departure climb ratio is 40:1. The proposed structure would exceed this slope by approximately 877 feet.

The site of the proposed structure places it within a triangle formed by three major airports. The total aeronautical operations for these airports in 1962 amounted to 330,538.

Based upon the aeronautical study, it is the finding of the Agency that, with the noted exception, the utilization of the above minimum en route altitudes and instrument approach procedures would be hazardous to aircraft using them and the changes in minimum altitudes and procedures which would be required to accommodate the structure would result in a substantial adverse effect upon aeronautical operations in the New Orleans terminal area.

Therefore, pursuant to the authority delegated to me by the Administrator (§ 77.37 [New]), it is found that the proposed structure would have a substantial adverse effect upon the safe and efficient utilization of airspace; and it is hereby determined that the proposed structure would be a hazard to air navigation.

This determination is effective as of the date of issuance and will become final 30 days thereafter unless an appeal is filed under § 77.39 [New] (27 F.R. 10352). If the appeal is denied, the determination will then become final as of the date of the denial or 30 days after the issuance of the determination, whichever is later.

Issued in Washington, D.C., on March 29, 1963.

GEORGE R. BORSARI,
Chief, Obstruction Evaluation Branch.
[F.R. Doc. 63-3595; Filed Apr. 5, 1963;
8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 15029]

ROGER R. ADAMS

Order To Show Cause

In the matter of Robert R. Adams, Los Angeles, California, Docket No. 15029; order to show cause why there should not be revoked the license for Radio Station 11W3782 in the Citizens Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee at his address of record as follows: Official Notice of Violation dated December 31, 1962, alleging violation of § 19.61(a) of the Commission's rules.

It further appearing, that said licensee did not reply to such communication or to a follow-up letter dated February 5, 1963, also mailed to the licensee at his address of record; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.76 of the Commission's rules:

It is ordered, This 3d day of April 1963, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.291(b) (8) of Part 0 of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Acting Secretary send a copy of this Order by Certified Mail—Return Receipt Requested to the said licensee at his last known address of 242 South Coronado Street, Los Angeles, Calif.

Released: April 3, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3624; Filed, Apr. 5, 1963;
8:51 a.m.]

[Docket No. 15025; FCC 63M-417]

FINE MUSIC BROADCASTERS

Order Scheduling Prehearing Conference and Hearing

In re application of Hal Cox and Merwyn R. Bailey, d/b as Fine Music Broadcasters, Docket No. 15025, File No. BMPH-7478; for additional time to construct Radio Station KFIN, Seattle, Washington.

It is ordered, This 29th day of March 1963, that Isadore A. Honig will preside at the hearing in the above-entitled pro-

ceeding which is hereby scheduled to commence on June 4, 1963, in Washington, D.C.; and, it is further ordered, that a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., April 19, 1963.

Released: April 2, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3625; Filed, Apr. 5, 1963;
8:51 a.m.]

[Docket No. 15021; FCC 63-283]

HOUSTON COUNTY TELEPHONE CO., INC.

Order Designating Application for Hearing on Stated Issues

In re application of Houston County Telephone Company, Incorporated, Docket No. 15021, File No. 1361-C1-P-63; for a construction permit to establish facilities in the Domestic Public Point-to-Point Microwave Radio Service near Dodge, Texas.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 27th day of March 1963;

The Commission having under consideration an application filed on September 18, 1962, by Houston County Telephone Company, Inc. (hereinafter called applicant) for a construction permit to establish facilities in the Domestic Public Point-to-Point Microwave Radio Service near Dodge, Texas;

It appearing, that the proposed facilities are designed to transmit certain television signals to a community antenna television system, Colorvision Engineering Company, Inc., in Crockett, Texas; service to the said prospective subscriber is apparently the sole basis for the application herein;

It further appearing, that the applicant is owned by three individual stockholders who own and control at least seventy-six percent of Colorvision Engineering Company, Inc. and that the said subscriber may not be a public subscriber, i.e., a subscriber not directly or indirectly controlling or controlled by, or under direct or indirect common control with the applicant;

It further appearing, that although applicant is unquestionably a common carrier in the rendition of its telephone service to subscribers, for which service a continuing need is manifest; and that if the requested microwave facilities were to be used solely in furtherance of its telephone operations, a need therefor might be presumed;

It further appearing, that since applicant proposes to use the requested facilities to provide a distinctly different type of service than that now being rendered (i.e., transmission of television signals to serve a CATV system instead of telephone service), and since Colorvision Engineering Company, Inc. apparently is not a public subscriber (as hereinabove defined), there is a sub-

stantial question regarding the need for the establishment of the proposed communications common carrier service;

It further appearing, that by reason of the foregoing the Commission is unable to find that a grant of the application would serve the public interest, convenience or necessity:

It is ordered, That the above entitled application is designated for hearing, at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the nature and the extent of the interests existing between the applicant and Colorvision Engineering Company, Inc.

(b) To determine whether Colorvision Engineering Company, Inc. is a public subscriber (as hereinabove defined).

(c) To determine the need for the holding out to public subscribers (as hereinabove defined) of the communications common carrier service proposed by the applicant.

(d) To determine, in the light of the evidence adduced on all the foregoing issues, whether or not, and under what conditions, the public interest, convenience or necessity would be served by a grant of the subject application.

It is further ordered, That the burden of proof on all of the foregoing issues is placed on the applicant:

It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceedings herein:

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with the provisions of § 1.140 of the Commission's rules.

Released: April 3, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3626; Filed, Apr. 5, 1963;
8:51 a.m.]

[Docket No. 15021; FCC 63M-419]

HOUSTON COUNTY TELEPHONE CO., INC.

Order Scheduling Prehearing Conference and Hearing

In re application of Houston County Telephone Company, Incorporated, Docket No. 15021, File No. 1361-C1-P-63; for a construction permit to establish facilities in the Domestic Public Point-to-Point Microwave Radio Service near Dodge, Texas.

It is ordered, This 29th day of March 1963, that David I. Kraushaar will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 13, 1963, in Washington, D.C.; and, it is further ordered, that a prehearing conference in the proceed-

ing will be convened by the presiding officer at 9:00 a.m., April 19, 1963.

Released: April 3, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3627; Filed, Apr. 5, 1963;
8:51 a.m.]

[Docket No. 15030]

DONALD J. O'HALLARON

Order To Show Cause

In the matter of Donald J. O'Hallaron, Fenton, Missouri, Docket No. 15030; order to show cause why there should not be revoked the license for radio station WOTEJ in the Amateur Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee at his address of record as follows: Official Notice of Violation dated January 28, 1963, alleging violation of § 12.111 of the Commission's rules.

It further appearing, that said licensee did not reply to such communication or to a follow-up letter dated February 5, 1963, also mailed to the licensee at his address of record; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.76 of the Commission's rules;

It is ordered, This 3d day of April 1963, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.291(b) (8) of Part 0 of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Acting Secretary send a copy of this Order by Certified Mail—Return Receipt Requested to the said licensee at his last known address of RFD 1, Horan Drive, Fenton, Mo.

Released: April 3, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3628; Filed, Apr. 5, 1963;
8:51 a.m.]

[Docket Nos. 14581, 14582; FCC 63M-413]

WIDU BROADCASTING, INC. AND AL-OR BROADCASTING CO.

Order Continuing Hearing Conference

In re applications of WIDU Broadcasting, Incorporated, Asheboro, North Caro-

lina, Docket No. 14581, File No. BP-14348; W. A. Corbett, J. R. Marlowe, and Roy Cox, Jr., tr/as AL-OR Broadcasting Company, Mebane, North Carolina, Docket No. 14582, File No. BP-15051; for construction permits.

It is ordered, This 1st day of April 1963, on the Hearing Examiner's own motion, that the hearing conference scheduled for April 1 is continued to April 11, 1963, at 2:00 p.m.

Released: April 2, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3629; Filed, Apr. 5, 1963;
8:51 a.m.]

[Docket No. 15032]

GEORGE E. WILSON

Order To Show Cause

In the matter of George E. Wilson, Arcadia, Missouri, Docket No. 15032; order to show cause why there should not be revoked the license for Radio Station WOKLY in the Amateur Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee at his address of record as follows: Official Notice of Violation dated October 10, 1962, alleging violation of § 12.111 of the Commission's rules.

It further appearing, that said licensee did not reply to such communication or to a follow-up letter dated January 11, 1963 also mailed to the licensee at his address of record; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.76 of the Commission's rules;

It is ordered, This 2d day of April 1963, pursuant to section 312(a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.291(b) (8) of Part 0 of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Acting Secretary send a copy of this Order by Certified Mail—Return Receipt Requested to the said licensee at his last known address of Arcadia, Mo.

Released: April 2, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3630; Filed, Apr. 5, 1963;
8:51 a.m.]

¹ Dissenting statement of Commissioner Bartley filed as part of the original document. Commissioner Lee dissenting.

[Docket No. 15026; FCC 63M-416]

WOMA TYPA BROADCASTING CO.**Order Scheduling Prehearing
Conference and Hearing**

In re application of Clagett "Woody" Wood and Paul Edgar Johnson d/b as WOMA TYPA Broadcasting Company, Mount Airy, North Carolina, Docket No. 15026, File No. BP-14579; for construction permit.

It is ordered, This 29th day of March 1963, that Basil P. Cooper will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 16, 1963, in Washington, D.C.; and, it is further ordered, that a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m. on April 18, 1963.

Released: April 2, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[P.R. Doc. 63-3631; Filed, Apr. 5, 1963;
8:51 a.m.]

FEDERAL MARITIME COMMISSION**PORT OF SEATTLE AND CARGILL, INC.****Notice of Agreement Filed for
Approval**

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8705-1, between the Port of Seattle (Port) and Cargill, Inc., (Cargill), modifies the basic agreement of the parties which provides for the lease of certain terminal properties and grain elevator facilities at Seattle, Washington. The purpose of the modification is to provide for increased rental to compensate for additional construction at the leased premises.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., and may submit within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

APRIL 2, 1963.

[P.R. Doc. 63-3614; Filed, Apr. 5, 1963;
8:49 a.m.]

FEDERAL PETROLEUM BOARD**CHIEF INVESTIGATOR, FEDERAL
PETROLEUM BOARD, ET AL.****Redelegations of Authority**

SECTION 1. The redelegations of authority which follow are made pursuant to 30 CFR 222.25 (27 F.R. 11760).

SEC. 2. The Chief Investigator, Federal Petroleum Board, and Investigators-in-Charge, Federal Petroleum Board Districts, are severally authorized:

(a) To conduct investigations and investigatory proceedings, to interview and interrogate witnesses, and to inspect books and records and examine properties and facilities pursuant to 30 CFR 222.4;

(b) To administer oaths and affirmations and serve subpoenas;

(c) To issue subpoenas and compel the attendance and testimony of witnesses, and the production of evidence; except that Investigators-in-Charge, Federal Petroleum Board Districts, shall not compel the testimony of any witness or the production of any records after a claim of privilege against self-incrimination has been made, unless, in each instance, he has been specifically authorized to do so by the Chairman or the Chief Investigator;

(d) To order the preparation of diagrams pursuant to 30 CFR 222.9b.

SEC. 3. The General Investigators, Federal Petroleum Board, are severally authorized:

(a) To conduct investigations and investigatory proceedings, to interview and interrogate witnesses, and to inspect books and examine properties and facilities pursuant to 30 CFR 222.4;

(b) To administer oaths and affirmations and serve subpoenas.

SEC. 4. This order shall become effective upon publication in the FEDERAL REGISTER.

PERRY BLANTON,
Chairman, Federal Petroleum Board,
Kilgore, Tex.

APRIL 2, 1963.

[P.R. Doc. 63-3596; Filed, Apr. 5, 1963;
8:45 a.m.]

**SECURITIES AND EXCHANGE
COMMISSION**

[File Nos. 70-4109, 60-22]

**CONNECTICUT YANKEE ATOMIC
POWER CO.****Notice of Filing and Order for Hearing
on Joint Application-Declaration;
Order Instituting Proceeding; Order
Directing Hearing Thereon; and
Order Consolidating Proceedings**

APRIL 1, 1963.

In the matters of Connecticut Yankee
Atomic Power Company, The Connecti-

cut Light and Power Company, New England Power Company, Boston Edison Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, Central Maine Power Company, Public Service Company of New Hampshire, Montaup Electric Company, File No. 70-4109; The Connecticut Light and Power Company, New England Power Company, The United Illuminating Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, Boston Edison Company, Central Maine Power Company, Public Service Company of New Hampshire, Montaup Electric Company, Central Vermont Public Service Corporation, New Bedford Gas and Edison Light Company, Cambridge Electric Light Company, File No. 60-22.

I. Notice is hereby given that a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act") has been filed with this Commission by Connecticut Yankee Atomic Power Company ("Conn Yankee"), a public service company under the laws of Connecticut; The Connecticut Light and Power Company ("Conn L&P"), an exempt holding company and a public-utility company; New England Power Company ("NEPCO"), an exempt holding company and a public-utility subsidiary company of New England Electric System ("NEES"), a registered holding company; The Hartford Electric Light Company ("Hartford"), a public-utility company and an affiliate of a public-utility company; Western Massachusetts Electric Company ("Western Mass"), a public-utility subsidiary company of Western Massachusetts Companies, an exempt holding company; Boston Edison Company ("Boston Ed"), a public-utility company and an affiliate of a public-utility company; Central Maine Power Company ("Central Maine"), a public-utility company and an affiliate of a public-utility company; Montaup Electric Company ("Montaup"), a public-utility subsidiary company of Eastern Utilities Associates, a registered holding company; and Public Service Company of New Hampshire ("New Hampshire"), a public-utility company and an exempt holding company. Applicants-declarants have designated sections 3, 6(b), 9(a), and 10 of the Act as applicable to the proposed transactions.

Reference is made to said joint application-declaration which is on file in the office of this Commission for a complete statement of the transactions proposed which are summarized as follows:

Conn Yankee was recently organized for the purpose of constructing and operating a nuclear-powered electric generating plant. The proposed plant, to be located on the east bank of the Connecticut River at Haddam Neck, Connecticut, and scheduled for completion in 1967, will utilize a pressurized water nuclear reactor using slightly enriched uranium as fuel and cooled and moderated by ordinary water, and will

have an expected initial capacity of 500 megawatts. The entire output of the proposed generating plant will be sold to a group of twelve New England electric utility companies ("the sponsor companies"), each of which will be obligated, pursuant to long-term contracts to be entered into with Conn Yankee, to purchase a fixed percentage (equal to the percentage of its ownership of Conn Yankee's common stock as set forth below) of the capacity and power of the proposed plant, at a price based on Conn Yankee's cost of service. The filing states that deliveries of power will be made at Conn Yankee's plant for transmission to the sponsor companies over existing and proposed interconnected transmission facilities of the sponsor companies. The cost of the plant is estimated at between \$70 million and \$80 million, and the company's ultimate capitalization, after completion of the financing of the plant, is expected to be about \$85 million.

As an initial step in its financing program, Conn Yankee proposes to issue and sell for cash, from time to time as funds are required, an aggregate of 50,000 shares of its \$100 par value common stock. Such stock will be sold at a price of \$100 per share to the sponsor companies in the following proportions:

Sponsor company	Number of shares	Amount (in thousands)	Percent of total
Conn L&P*	12,500	\$1,250	25.0
NEPCO*	7,500	750	15.0
Boston Ed*	4,750	475	9.5
Hartford*	4,750	475	9.5
The United Illuminating Co. ("United")	4,750	475	9.5
Western Mass*	4,750	475	9.5
Central Maine*	3,000	300	6.0
New Hampshire*	2,500	250	5.0
Montaup*	2,250	225	4.5
New Bedford Gas & Edison Light Co. ("New Bedford")	1,250	125	2.5
Cambridge Electric Light Co. ("Cambridge")	1,000	100	2.0
Central Vermont Public Service Corp. ("Central Vermont")	1,000	100	2.0
Total	50,000	5,000	100.0

*Applicant-declarant under File No. 70-4109

Conn Yankee proposes to raise the balance of its required capital by the sale of additional common stock to the sponsor companies and by the sale of senior securities. The filing states that the type, amount, and method of sale of such senior securities have not yet been determined. Conn Yankee requests permission to conduct such negotiations with investment banking firms and other potential purchasers as may be desirable to determine the type, amount, and method of its permanent financing program.

Conn Yankee seeks an exemption under section 6(b) of the Act to issue and sell its common stock and, with respect to such issue and sale, an exception from the competitive bidding requirements of Rule 50 under the Act. Each applicant-declarant sponsor company requests approval under sections 9(a) and 10 of the Act in respect of its proposed acquisition of Conn Yankee's common stock; and Conn L&P and NEPCO,

each of which proposes to acquire in excess of 10 percent of such common stock, request an order under section 3(a) of the Act continuing their present exemptions from the provisions of the Act (except section 9(a) (2) thereof).

The filing states that purchasing, accounting, engineering, legal, and similar services will be performed, at cost, for Conn Yankee by one or more of the sponsor companies, particularly by Conn L&P, by New England Power Service Company ("NEPCO"), a subsidiary service company of NEES, and by Yankee Atomic Electric Company ("Mass Yankee"). Mass Yankee is a public-utility subsidiary company of NEES, NEPCO, and Conn L&P and is owned jointly by eleven of Conn Yankee's twelve sponsor companies.

The filing further states that the proposed issue of stock by Conn Yankee is subject to the jurisdiction of the Public Utilities Commission of Connecticut; that the acquisitions of such stock by the sponsor companies organized in Massachusetts are subject to the jurisdiction of the Massachusetts Department of Public Utilities; and that no other State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It appears to the Division of Corporate Regulation ("Division") that it is appropriate in the public interest and the interest of investors that the joint application-declaration (File No. 70-4109) shall not be granted or permitted to become effective, except pursuant to further order of the Commission.

II. The Commission has been advised by the Division that the Division has made an examination of the background of the Conn Yankee project; of the construction, operations, and management contemplated for Conn Yankee; of the arrangements and understandings in connection therewith; of the business, financial condition, and practices of the sponsor companies; and of the joint application-declaration filed with the Commission.

The Commission, upon the basis of the information supplied it by the Division deems it appropriate in the public interest and in the interest of investors and consumers that a proceeding be instituted for the purpose of determining whether any of the sponsor companies, other than Conn L&P and NEPCO, should be deemed to be a holding company in respect of Conn Yankee pursuant to section 2(a) (7) (B) of the Act (File No. 60-22).

III. It appears to the Commission that common issues of law and fact arise under the applicable sections of the Act making it appropriate that the two proceedings be consolidated and that a hearing be held in the consolidated proceeding:

It is hereby ordered, (a) That a proceeding be, and the same hereby is, instituted pursuant to section 2(a) (7) (B) of the Act in respect of United, Hartford, Western Mass, Boston Ed, Central Maine, New Hampshire, Montaup, Central Vermont, New Bedford, and Cambridge, and that said proceeding be, and the same hereby is, consolidated with the

proceeding on the joint application-declaration; and

(b) That Conn Yankee, Conn L&P, NEPCO, United, Hartford, Western Mass, Boston Ed, Central Maine, New Hampshire, Montaup, Central Vermont, New Bedford and Cambridge be, and the same hereby are, made parties to the proceeding instituted pursuant to section 2(a) (7) (B).

It is further ordered, That the hearing in said consolidated proceeding be held on the 22d day of April 1963, at 10:00 a.m., at the office of the Commission, 425 Second Street NW., Washington 25, D.C. Any person or company desiring to be heard in connection with said consolidated proceeding or proposing to intervene therein shall file with the Secretary of the Commission, Washington 25, D.C., on or before April 18, 1963, a written request relative thereto as prescribed in Rule 9 of the Commission's rules of practice. A copy of such filing shall be served personally or by mail (air-mail if the person being served is located more than 500 miles from the point of mailing) upon all parties at their addresses, and proof of service (by affidavit, or, in the case of an attorney at law, by certificate) filed or dispatched contemporaneously with such filing.

It is further ordered, That Sidney Gross or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearing in said consolidated proceeding. The officer so designated to preside at any such hearing is hereby authorized to exercise all of the powers granted to the Commission under section 18(c) of the Act and to a hearing officer under the Commission's rules of practice.

The Division having advised the Commission that the following matters and questions are presented for consideration at such hearing, without prejudice, however, to the presentation of additional matters and questions upon further examination:

1. Whether the exemption requested by Conn Yankee under section 6(b) of the Act with respect to the proposed issue and sale of common stock should be granted and, if so, what terms and conditions, if any, are appropriate in the public interest or for the protection of investors and consumers.

2. Whether the proposed acquisitions of Conn Yankee's common stock by the applicant-declarant sponsor companies are in all respects in accordance with the applicable standards of the Act, particularly section 10 thereof.

3. Whether each or any of the sponsor companies, directly or indirectly, exercise, or would exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of Conn Yankee as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that each or any of such sponsor companies be subject to the obligations, duties, and liabilities imposed by the Act upon holding companies.

4. Whether the granting of an exemption, in whole or in part, to Conn L&P

and NEPCO, or either of them, under section 3(a) of the Act would be detrimental to the public interest or the interest of investors or consumers.

5. Whether compliance by Conn Yankee with the competitive bidding requirements of Rule 50 is not appropriate in the public interest or for the protection of investors or consumers with respect to the proposed issue and sale of its common stock and with respect to the proposed negotiations regarding the type and amount of senior securities to be issued and sold and the method of its permanent financing program.

6. Whether the services proposed to be rendered to Conn Yankee by one or more of the sponsor companies, by Mass Yankee, and by NEPCO are in accordance with the requirements of section 13 of the Act and all applicable rules thereunder.

7. Generally, whether the proposed transactions and all matters related or incidental thereto are in accordance with the standards of the Act, and whether, in the event that the joint application-declaration should be granted and permitted to become effective, it is necessary or appropriate in the public interest or for the protection of investors or consumers to impose terms or conditions to ensure compliance with the Act.

It is further ordered, That particular attention be directed at said hearing to the foregoing matters and questions.

It is further ordered, That the Secretary of the Commission shall give notice of said hearing by mailing copies of this Notice and Order by registered mail to Connecticut Yankee Atomic Power Company, P.O. Box 2010, Hartford, Conn.; The Connecticut Light and Power Company, P.O. Box 2010, Hartford, Conn.; New England Power Company, 441 Stuart St., Boston 16, Mass.; The United Illuminating Company, 80 Temple St., New Haven, Conn.; The Hartford Electric Light Company, P.O. Box 2370, Hartford, Conn.; Western Massachusetts Electric Company, 174 Brush Hill Ave., West Springfield, Mass.; Boston Edison Company, 182 Tremont St., Boston 12, Mass.; Central Maine Power Company, 9 Green St., Augusta, Maine; Public Service Company of New Hampshire, 1087 Elm St., Manchester, N.H.; Montaup Electric Company, 85 North Main St., Fall River, Mass.; Central Vermont Public Service Corporation, Rutland, Vt.; New Bedford Gas and Edison Light Company, 130 Austin St., Cambridge, Mass.; Cambridge Electric Light Company, 130 Austin St., Cambridge, Mass.; Atomic Energy Commission, Washington 25, D.C.; Federal Power Commission, Washington 25, D.C.; Massachusetts Department of Public Utilities, State House, Boston 33, Mass.; Public Utilities Commission of Connecticut, State Office Building, Hartford, Conn.; Public Utilities Commission of New Hampshire, Concord, N.H.; Public Utilities Commission of Maine, Augusta, Maine; Public Service Commission of Vermont, Montpelier, Vt.; and Rhode Island Department of Business Regulation, Providence, R.I.; and that notice to all other persons shall be given by publication of this notice and order in the FEDERAL REGISTER and by a

general release of the Commission which shall be distributed to the press and to the mailing list for releases issued under the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-3600; Filed, Apr. 5, 1963;
8:46 a.m.]

[File No. 812-1573]

DE VEGH INVESTING CO., INC., AND WINTHROP DE VEGH MANAGEMENT CO., INC.

Notice of Application for Temporary Exemption From Provisions of Section 15(a) Requiring Shareholder Approval of Investment Advisory Agreement

APRIL 2, 1963.

Notice is hereby given that an application has been filed by De Vegh Investing Company, Inc. ("De Vegh") 26 Broadway, New York 4, New York, a Maryland corporation and an open-end diversified investment company registered under the Investment Company Act of 1940 ("Act") and by Winthrop de Vegh Management Company, Inc. ("Management"), 26 Broadway, New York 4, New York, the investment adviser of De Vegh, pursuant to section 6(c) of the Investment Company Act of 1940 for an order exempting Management from the stockholder approval requirements of section 15(a) of the Act during the period from April 1, 1963 until the date of a stockholder's meeting to be held not later than May 31, 1963.

All interested persons are referred to the application on file with the Commission for a full statement of the representations therein which are summarized below.

De Vegh is presently a party to an investment advisory contract with Management entered into on April 1, 1962 with the approval of stockholders of De Vegh. The contract provides that it shall continue in effect for successive annual periods beginning April 1 of each year provided that such continuance is approved annually by a majority of the outstanding voting securities of De Vegh or by the board of directors of De Vegh and provided further that continuance of the contract is approved by a majority of the outstanding voting securities of De Vegh at the annual meeting of stockholders in March 1963. In recent weeks the directors of De Vegh have been considering merging the company with another open-end investment company. Such a merger would require shareholder approval of both corporations. If the present negotiations are successful, the documents necessary for a shareholder's meeting of De Vegh could be prepared and approved so that a shareholder's meeting could be held not later than May 31, 1963.

In order to avoid the expense of two stockholder meetings, De Vegh is postponing its annual meeting scheduled for

March 26, 1963 to such time, not later than May 31, 1963, as a meeting can be called to vote on the merger, or sooner if present negotiations are not successful. The present advisory contract therefore will terminate by its terms on April 1, 1963.

On February 13, 1963, a majority of the unaffiliated directors of De Vegh approved a new investment advisory agreement, identical with the present contract, which would become effective April 1, 1963 and pursuant to which Management proposes to serve as the investment adviser of De Vegh until the date of the postponed annual stockholder's meeting, subject to ratification by stockholders at such meeting.

Section 15(a) of the Act provides, among other things, that it shall be unlawful for any person to serve or act as an investment advisor of a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company and provides in substance for its automatic termination in the event of its assignment by the investment advisor.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 17, 1963, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon De Vegh and Management, at the addresses set forth above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-3601; Filed, Apr. 5, 1963;
8:46 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 561 (27 F.R. 4001) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (29 CFR 522.1 to 522.9) are as indicated below. Conditions provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

B. C. J. Corp., 5 John Street, Carbondale, Pa.; effective 3-27-63 to 3-26-64 (children's dresses).

Big Ace Corp., 355 Oneta Street, Athens, Ga.; effective 3-28-63 to 3-27-64 (men's overalls and dungarees).

Big Yank Corp., Tyrone, Pa.; effective 3-31-63 to 3-30-64 (men's and boys' cotton work pants).

Cookeville Shirt Co., 106 North Walnut Street, Cookeville, Tenn.; effective 3-24-63 to 3-23-64 (men's dress shirts).

Ely & Walker, LaFayette, Ga.; effective 3-20-63 to 3-19-64 (men's sport shirts).

Empire Manufacturing Co., Winder, Ga.; effective 4-1-63 to 3-31-64 (men's and boys' pants).

Huntington Manufacturing Co., Inc., 629 10th Street, Huntington, W. Va.; effective 3-24-63 to 3-23-64 (women's cotton, nylon, and woolen dresses).

Samuel Meltzer d/b/a, The Liberty Co., Alexander Avenue, Bradford, Tenn.; effective 3-19-63 to 3-18-64 (men's and boys' pajamas).

M. T. Company, Spartanburg Highway, Hendersonville, N.C.; effective 4-1-63 to 3-31-64; learners may not be employed in the production of separate skirts at less than the statutory minimum (children's and misses' blouses, shorts, jamaicas, midcalfs, etc.).

Martin Manufacturing Co., Inc., Ramer, Tenn.; effective 3-31-63 to 3-30-64 (men's uniform shirts).

O'Brien Manufacturing Co., 2506 North General Bruce Drive, Temple, Tex.; effective 3-20-63 to 3-19-64 (men's and boys' semi-dress pants, jeans, and outerwear jackets).

Oshkosh B'Gosh, Inc., 112 Otter Avenue, Oshkosh, Wis.; effective 3-19-63 to 3-18-64 (men's work clothing).

Princess Peggy, Inc., Vandalia Division, Vandalia, Ill.; effective 3-20-63 to 3-19-64 (women's cotton dresses).

Reidbord Brothers Co., Livingston Street, Elkins, W. Va.; effective 3-21-63 to 3-20-64 (men's trousers and work shirts).

Reliance Manufacturing Co., Freedom Factory, Edwards Street at Tuscan Avenue, Hattiesburg, Miss.; effective 3-25-63 to 3-24-64 (men's and boys' pajamas).

Roswell Manufacturing Co., 38 Hill Street, Roswell, Ga.; effective 3-25-63 to 3-24-64 (men's work pants).

Tower City Dress Co., Inc., 800 State Street, Utica, N.Y.; effective 3-22-63 to 3-21-64 (misses' and women's dresses).

W. F. Apparel Co., Inc., 902 West Main Street, West Frankfort, Ill.; effective 3-31-63 to 3-30-64 (women's and misses' dresses).

Windon Manufacturing Co., Church Street, Winona, Miss.; effective 3-31-63 to 3-30-64 (boys' and men's sport shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Blue Gem Manufacturing Co., Stoneville, N.C.; effective 3-26-63 to 3-25-64; 10 learners (men's and boys' denim dungarees and misses' dungarees).

Duquesne Manufacturing Co., 852 Constitution Boulevard, New Kensington, Pa.; effective 4-1-63 to 3-31-64; 10 learners (women's cotton house dresses).

Kentucky Garment Co., Inc., 410 East 1st Street, Hopkinsville, Ky.; effective 3-25-63 to 3-24-64; 10 learners (children's sun suits and slacks).

Perfect Brassiere Co., Inc., 521 East Fourth Street, Bethlehem, Pa.; effective 3-20-63 to 3-19-64; 10 learners (women's brassieres).

Roswell Manufacturing Co., Alpharetta, Ga.; effective 3-25-63 to 3-24-64; 10 learners (men's work pants).

Sussex Sportswear, Inc., Selbyville, Del.; effective 3-26-63 to 3-25-64; 10 learners (ladies' blouses and dresses).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Brevard Manufacturing Co., P.O. Box 709, Brevard, N.C.; effective 3-25-63 to 9-24-63; 50 learners (children's dresses and blouses).

Eileen Hope, Inc., 122 Juniper Street, Harrisburg, Pa.; effective 3-21-63 to 9-20-63; 10 learners (women's dresses).

J. H. Manufacturing Co., Inc., Centerville, Tenn.; effective 3-25-63 to 9-24-63; 120 learners (boys' pants).

Kentucky Garment Co., Inc., 410 East 1st Street, Hopkinsville, Ky.; effective 3-25-63 to 9-24-63; 15 learners (children's sun suits and slacks).

The H. D. Lee Co., Inc., Sulphur Springs, Tex.; effective 3-24-63 to 9-23-63; 75 learners (Western pants).

Marietta Manufacturing Co., Marietta, Miss.; effective 3-21-63 to 9-20-63; 15 learners (ladies' blouses).

Rosetta-Sue, Inc., Great Falls, S.C.; effective 3-25-63 to 9-24-63; 10 learners (ladies' bermuda shorts, capri, slim jims, etc.).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.60 to 522.65, as amended).

Glove Corp., Heber Springs, Ark.; effective 3-22-63 to 9-21-63; 10 learners for plant expansion purposes (leather and cotton combination work gloves).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

Sierra Lingerie Co., 300 West 12th Street, Ogden, Utah; effective 3-19-63 to 9-18-63; 10 learners for plant expansion purposes (ladies' and children's undergarments, panties, and children's pajamas).

Sierra Lingerie Co., 300 West 12th Street, Ogden, Utah; effective 3-19-63 to 3-18-64; 5 learners for normal labor turnover purposes (ladies' and children's undergarments, panties, and children's pajamas).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Anasco Sports Co., Inc., Anasco, P.R.; effective 3-4-63 to 3-3-64; 10 learners for normal labor turnover purposes, in any factory productive occupation (with certain exceptions), each for a learning period of 480 hours at the rates of 60 cents an hour for the period of March 4, 1963, to March 17, 1963, and 68 cents an hour, effective March 18, 1963, for the first 240 hours, and 73 cents an hour for the remaining 240 hours (athletic shoes).

Anasco Sports Co., Inc., Anasco, P.R.; effective 3-4-63 to 9-3-63; 20 learners for plant expansion purposes, in any factory productive occupation (with certain exceptions), each for a learning period of 480 hours at the rates of 60 cents an hour for the period of March 4, 1963, to March 17, 1963, and 68 cents an hour, effective March 18, 1963, for the first 240 hours, and 73 cents an hour for the remaining 240 hours (athletic shoes).

Becton, Dickinson & Co., S.A. (P.R.), Juncos, P.R.; effective 3-1-63 to 2-29-64; 10 learners for normal labor turnover purposes, for thermometer making for a learning period of 480 hours at the rates of 92 cents an hour for the first 240 hours and \$1.04 an hour for the remaining 240 hours (thermometers).

Clairex Corp., P.O. Box 801, Roosevelt, P.R., Villa Prades Ind. Development, Rio Piedras, P.R.; effective 3-1-63 to 2-29-64; five learners for normal labor turnover purposes, in the occupations of photocell assembler; and inspector and tester, each for a learning period of 480 hours at the rates of 92 cents an hour for the first 240 hours and \$1.04 an hour for the remaining 240 hours (photoelectric cells).

Clairex Corp., P.O. Box 801, Roosevelt, P.R., Villa Prades Ind. Development, Rio Piedras, P.R.; effective 3-1-63 to 8-31-63; 20 learners for plant expansion purposes, in the occupations of photocell assembler; inspector and tester, each for a learning period of 480 hours at the rates of 92 cents an hour for the first 240 hours and \$1.04 an hour for the remaining 240 hours (photoelectric cells).

Commonwealth Sports Products, Inc., 66 Comercio Street, Aguadilla, P.R.; effective 3-1-63 to 11-9-63; five learners for normal labor turnover purposes, in the occupations of: (1) stitching machine operator for a learning period of 320 hours at the rates of 57 cents an hour for the first 160 hours and 66 cents an hour for the remaining 160 hours; and (2) die and clicker machine operator; leather stamper; leather sorter (re-graders); eyeletter; turner; final glove layer off; each for a learning period of 160 hours at the rate of 57 cents an hour (golf, ski, and

handball gloves; golf club covers) (replacement certificate).

Commonwealth Sports Products, Inc., 66 Comercio Street, Aguadilla, P.R.; effective 3-1-63 to 5-9-63; 44 learners for plant expansion purposes, in the occupations of: (1) stitching machine operator for a learning period of 320 hours at the rates of 57 cents an hour for the first 160 hours and 66 cents an hour for the remaining 160 hours; and (2) die and clicker machine operator; leather stamper; leather sorter (regraders); eye-let; turner; final glove layer off; final inspector, each for a learning period of 160 hours at the rate of 57 cents an hour (golf, ski, and handball gloves; golf club covers) (replacement certificate).

General Electric Wiring Devices, Inc., Juana Diaz, P.R.; effective 3-1-63 to 2-29-64; 16 learners for normal labor turnover purposes, in the occupation of molder; assembler, each for a learning period of 480 hours at the rates of 92 cents an hour for the first 240 hours and \$1.04 an hour for the remaining 240 hours (electrical wiring devices). Isabel Products, Inc., Santa Isabel, P.R.; effective 3-4-63 to 3-3-64; 10 learners for normal labor turnover purposes, in the occupation of sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours (girdles and brassieres).

Isabel Products, Inc., Santa Isabel, P.R.; effective 3-4-63 to 9-3-63; 150 learners for plant expansion purposes, in the occupations of: (1) sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours; and (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 85 cents an hour (girdles and brassieres).

Manuela Manufacturing Co., Inc., Naranjito, P.R.; effective 3-6-63 to 3-5-64; 10 learners for normal labor turnover purposes, in the occupation of sewing machine operator for a learning period of 480 hours at the rates of 70 cents an hour for the first 240 hours and 81 cents an hour for the remaining 240 hours (ladies' embroidered underwear).

St. Regis Paper and Bag Corp. of Puerto Rico, Ponce, P.R.; effective 3-1-63 to 2-29-64; 10 learners for normal labor turnover purposes, in the occupations of: (1) bag sewer; sleeve, each for a learning period of 240 hours at the rate of 87 cents an hour; and (2) valver for a learning period of 160 hours at the rate of 87 cents an hour.

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

Signed at Washington, D.C., this 29th day of March 1963.

ROBERT G. GRONEWALD,
Authorized Representative
of the Administrator.

[F.R. Doc. 63-3599; Filed, Apr. 5, 1963;
8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 779]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 3, 1963.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 65632. By order of March 26, 1963, the Transfer Board approved the transfer to Thayne Robert Olson, doing business as Thayne R. Olson, Wichita, Kans., of Permit No. MC 118955, issued January 28, 1960, to William D. Kelly and Ruby B. Kelly, a partnership, doing business as R & B Truck Lines, Wichita, Kans., authorizing the transportation of: Malt beverages and advertising material for the sale of such beverages, from St. Paul, Minn., Omaha, Nebr., and Fort Wayne, Ind., to Wichita, Kans., and, returned shipments and empty malt beverage containers, from Wichita, Kans., to the above-named origin points. J. F. Miller, 500 Board of Trade Building, Kansas City 5, Mo., attorney for applicants.

No. MC-FC 65651. By order of March 27, 1963, the Transfer Board approved the transfer to H. P. Contract Carrier Co., a corporation, Philadelphia, Pa., of Permit No. MC 123666 issued September 4, 1962, to Herbert Pottash, Philadelphia, Pa., authorizing the transportation of petroleum products, in containers, tires, batteries, and automotive accessories, over irregular routes, from Philadelphia, Pa., to points in Camden, Cumberland, Salem, Burlington, Gloucester, Mercer, Monmouth, Middlesex, Atlantic, and Ocean Counties, N.J., and New Castle County, Del. Samuel D. Engelbach, 121 South Broad Street, Philadelphia 7, Pa., attorney for applicants.

No. MC-FC 65751. By order of March 28, 1963, the Transfer Board approved the transfer to Martin Wondaal, doing business as Martin Wondaal and Sons, Lansing, Ill., of Permits Nos. MC 116945 and MC 116945 Sub 1, issued June 16, 1958 and May 26, 1960, respectively, to Richard P. Doria, doing business as R & L Cartage, Lombard, Ill., authorizing the transportation of: Gravel, and building materials, from Munster, Ind., to points in Cook, Du Page, Lake, and Will Counties, Ill., and empty containers, from destination points to origin point; brick, in dump

vehicles, from Munster, Ind., to points in Michigan; and brick in dump vehicles or flatbed vehicles, from Munster, Ind., to points in Wisconsin, and points in Illinois (except those in Cook, Du Page, Lake, and Will Counties, Ill.). Samuel Ruff, 2109 Broadway, East Chicago, Ind., attorney for transferee.

No. MC-FC 65779. By order of March 26, 1963, the Transfer Board approved the transfer to Max J. Frisch, doing business as Clinton Trucking Co., Clinton, Mass., of Certificate No. MC 59918, issued by the Commission April 26, 1957, to Max J. Frisch and William P. McEneaney, a partnership, doing business as Clinton Trucking Company, Clinton, Mass., authorizing the transportation, over regular routes, of general commodities, excluding household goods, commodities in bulk, and other specified commodities, between Clinton, Mass., and Newark, N.J., between Clinton, Mass., and Boston, Mass., and between Clinton, Mass., and Worcester, Mass. Kenneth B. Williams, 111 State Street, Boston 9, Mass., attorney for applicants.

No. MC-FC 65782. By order of March 26, 1963, the Transfer Board approved the transfer to Monticello Transit Corporation, a corporation, Monticello, N.Y., of Certificate No. MC 5477, issued August 28, 1943, to Ralph Meyer, Monticello, N.Y., authorizing the transportation of passengers and their baggage, in charter operations, from Monticello, N.Y., and points within 25 miles thereof, to points in New York, New Jersey, and Pennsylvania, and return. Malvin A. Cohen, P.O. Box 604, Monticello, New York, attorney for applicant.

No. MC-FC 65792. By order of March 27, 1963, the Transfer Board approved the transfer to Dye Hauling Company, a corporation, Dallas, Tex., of Certificates Nos. MC 119849 and MC 119849 (Sub No. 1), issued April 6, 1961 and August 10, 1961, respectively, to Dye Trucking Co., a corporation, Dallas, Tex., authorizing the transportation, over irregular routes, of: Sand, gravel, rock, and similar commodities, in bulk, in dump vehicles, between specified counties in Texas, Colorado, Oklahoma, and Kansas, in both radial and non-radial movements. Joe T. Lanham, 1009 Perry-Brooks Building, Austin 1, Tex., attorney for applicants.

No. MC-FC 65804. By order of March 28, 1963, the Transfer Board approved the transfer to McLeod Trucking, Inc., Reno, Nev., of Certificates Nos. MC 45057, MC 45057 Sub 8, MC 45057 Sub 9, and MC 45057 Sub 12, issued February 6, 1950, August 21, 1952, November 27, 1957, and June 8, 1962, to Dale McLeod, doing business as McLeod Trucking Service, Reno, Nev., authorizing the transportation, over irregular routes, of: Specified commodities, of a general commodity nature, between specified points and territories in Nevada and California. Louis Mead Dixon, 310 Union Federal Building, 195 South Sierra Street, Reno, Nev., attorney for applicants.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 63-3606; Filed, Apr. 5, 1963;
8:48 a.m.]

FOURTH SECTION APPLICATION FOR RELIEF

APRIL 3, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 38246: *Cotton bale ties and buckles to Corpus Christi, Tex.* Filed by Southwestern Freight Bureau, Agent (No. B-8373), for interested rail carriers. Rates on iron or steel cotton bale ties and buckles, in carloads, from Birmingham and Fairfield, Ala., and Atlanta, Georgia, to Corpus Christi, Tex.

Grounds for relief: Market competition.

Tariff: Supplement 13 to Southwestern Freight Bureau tariff I.C.C. 4503.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-3607; Filed, Apr. 5, 1963; 8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—APRIL

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